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CONGRESS AND THE LOBBYIST

by

Glenn David Kelly, Jr.

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CONGRESS AND THE LOBBYIST

By

Glenn David Kelly, Jr.

Bachelor of Science

Louisiana State University, 1959

A Thesis Submitted to the School of Government and Business Administration of The George Washington University in Partial Fulfillment of the Requirements for the Degree of Master of Business Administration

June, 1968

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CHAPTER I

INTRODUCTION

> . . . Moral judgments constitute the real answer to the existence of lobbyists. . . . In the long run, a civilized morality is the sole key to the survival of democracy.
>
> -- Stephen K. Bailey
> Buchanan Committee (1950)

Lobbying and Federal Legislation in the United States

The emergence of the Federal Government as a tremendous social and economic force, accelerated since the early 1930's, has significantly affected the health, wealth, and security of individual citizens. Because lobbyists serve as a link between interest groups and Congress in the American democracy, lobbying activities affect the welfare of the populace to a far greater extent than most Americans realize.

This thesis concentrates on the activities of the lobbyist to influence policy, largely through efforts to secure passage or defeat of congressional legislation. Where appropriate, it spotlights the activities of the two largest business lobbying groups, the National Association of Manufacturers (NAM) and the Chamber of Commerce of the United States.

Although the U.S. Constitution guarantees the right to petition, lobbying nevertheless is generally the subject of distrust by the public and the press. The general public has stereotyped lobbyists and lobbying

activities as dealing in "bribes, blondes, and booze" to dazzle the docile legislator.

Title III of the Legislative Reorganization Act of 1946 is the only legislation ever passed by the U.S. Congress regarding the regulation of lobbying.[1] This Regulation of Lobbying Act is based on the principle of disclosure of the scope and size of efforts to influence legislation, as opposed to the control or complete elimination of these attempts to influence.

The Research Question

The research question of this thesis is: Is it feasible for the Congress to enact legislation that will accurately reveal the size and scope of a lobbyist's efforts to influence the congressional decision-making process, while respecting the individual rights guaranteed under the First Amendment?

Research Methodology

As the essence of this thesis is a historical overview of federal regulation of lobbying in the United States, the majority of the data presented were gathered from secondary sources. These included the Congressional Record, congressional committee hearings and reports, Congressional Quarterly, Inc., publications, judicial decisions, the

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[1] One minor exception was a direct ancestor of the 1946 Act which was effective only for the 44th Congress. This 1876 law is discussed briefly in Chapter III.

outstanding works of such authoritative authors as Kenneth G. Crawford, James Deakin, Lester W. Milbrath, and works by less well known students of lobbying.

The writer's collection, compilation, and analysis of primary data were greatly aided by his physical presence in the Nation's capital. Many potential obstacles were averted by the availability of a vast amount of expertise in the Legislative Branch and elsewhere in the Washington, D.C., metropolitan area. Although only three personal interviews are credited in the bibliography, numerous other persons assisted the writer in locating and analyzing the primary and secondary data that combined to produce this work.

Organization of the Thesis

The second chapter describes the role of the lobbyist and the activities he engages in to attempt to influence the congressional decision-making process in his favor. It discusses the functions of the lobbyist in congressional committee hearings: providing invaluable information in his field of endeavor to Congress and collaborating with other lobbyists to influence legislation and policy. The congressman, the lobbyist, and their interactions are discussed next, followed by a description of "grassroots" or indirect lobbying, considered by many to be the most effective lobbying technique today. And finally, the activities of the NAM, the Chamber of Commerce of the United States, and other business lobby groups mirror the businessman as a lobbyist.

To furnish the reader with a historical perspective of the subject of lobbying, Chapter III outlines lobbying activities from the start of lobbying in the outer lobbies of the House of Commons three centuries ago to the enactment of the Federal Regulation of Lobbying Act of 1946[1] on August 2, 1946.

Chapter IV discusses the judicial interpretations of the 1946 Act and the relatively few congressional investigations that explored the subject of effective regulation of lobbying activities.

"Reforms and Remedies," the fifth chapter, outlines the major loopholes of the 1946 Act. These loopholes, the ambiguous definitions of direct communication and principal purpose, and the lack of an agency to administer and enforce the 1946 Act are discussed. Also discussed are the two major proposals of the Ninetieth Congress, the Legislative Reorganization Acts of 1967 and 1968, and their respective provisions.

In the concluding chapter the writer presents his views of what would constitute a more effective lobbying Act.

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[1]A copy of the Act appears in the Appendix.

CHAPTER II

THE LOBBYIST

> A lobbyist is anyone who opposes legislation I want.
> A patriot is anyone who supports me.[1]
> --Senator James A. Reed of Missouri

A curious aspect of our society is that many of us use the word "lobbyist" to refer to something evil, to condemn pressure activities by hostile groups. There has been extensive confusion over the correct definition of the word "lobby" since its first recorded use in 1829, the year Andrew Jackson became President. It was originally applied in state politics to seekers after special privilege at the capitol in Albany, New York. There, Thurlow Weed and others soon made the title "lobby agent" well and unfavorably known.[2] This term was shortened to "lobbyist" by journalists and was in frequent use in the Nation's capital in the early 1830's.[3]

The term "lobbying" has recovered somewhat from the stigma of corruption attached to it in the 1870's and 1880's. However, its true significance is still not widely understood. The three definitions listed below

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[1] Karl Schriftgiesser, The Lobbyists: The Art and Business of Influencing Lawmakers (Boston: Little, Brown and Company, 1951), p. 1.

[2] Ibid., p. 5.

[3] Congress and the Nation, 1945-1964: A Review of Government and Politics in the Post-war Years (Washington: Congressional Quarterly Service, 1965), p. 1547.

represent today's common usage of the term.

Webster's Third New International Dictionary tells us that to lobby is to "conduct activities with the objective of influencing public officials and members of a legislative body with regard to legislation and other policy decisions." Another narrow definition of lobbying which seems appropriate to the writer is that activity engaged in by anyone who is required to register or report on his spending under the terms of the Federal Regulation of Lobbying Act of 1946. And finally, in its broadest application, and with the connotation it carries in this thesis, the term "lobbyist" is "used interchangeably with the term 'pressure group' to mean any organization or person that carries on activities which have as their ultimate aim to influence the decisions of Congress . . ."[1]

The lobbyist seems to perceive his occupation as carrying less prestige than other professions. He is admittedly the subject of considerable public disapproval, stemming partly from a general misunderstanding of his function and his right to petition as guaranteed by the Constitution. In fact, public disapproval of lobbyists and lobbying is so pronounced that today's lobbyist usually admits to his profession by that designation only reluctantly and qualifiedly, preferring one of the more respectable-sounding appellations, such as "Washington counsel," "Washington representative," "legislative representative," "legislative counsel," or "legislative liaison man."

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[1] Ibid.

Samuel Patterson provides an overview of the discussion of the varied tasks of today's lobbyist:

> He is the legislative representative who conceives his job to be that of making crucial contacts with the members of the legislative group. He devotes his time and energies to walking legislative halls, visiting legislators, collaring them in the halls, establishing relationships with administrative assistants and others of the congressman's staff, cultivating key legislators on a friendship basis, and developing contacts on the staffs of critical legislative committees.[1]

The most general way to describe the nature of the lobbyist's job is to note that he must in some way communicate with and influence governmental decision makers. This thesis concerns the relationships between the lobbyist and the decision makers in the Legislative Branch. The lobbyist is important to this Nation's political processes because he plays the political game expertly and tirelessly. Like a member of a jungle patrol, he probes for the enemy's weak point--that is, the branch of government least hostile to the attainment of his goals. In the United States, Congress occupies that exposed flank and must ward off the attacks of special-interest groups that may have only limited concern for the public interests. From the lobbyist's viewpoint, it is advantageous for him to concentrate his efforts upon the Legislative Branch and thus have maximum time available for services to the legislators and their staffs.

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[1]Harmon Zeigler, Interest Groups in American Society (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1965), p. 267, quoting Samuel Patterson.

The nature of a lobbying assignment largely determines the appropriate career background, but most lobbying tasks are very similar to legislative tasks. These tasks usually involve considerable interaction with other persons and a concern with federal policy problems. Perhaps this explains Milbrath's finding that three-fourths of the lobbyists he surveyed had law degrees and more than half had previously worked for the Federal Government.[1] James Deakin found that "The predominance of appointive office in the political backgrounds of lobbyists . . . /indicates/ that lobbyists are more likely to be recruited from the Executive Branch than from the Legislative Branch."[2]

The lobbyist is a valuable and necessary participant in the governmental process as an advocate of a particular viewpoint and legislative desires. Milbrath's explanation for the United States having more lobbyists than other nations today is:

> 1. It is characteristic of interests that they seek representation in governmental decision making; if they cannot find adequate representation through formal governmental or semi-governmental channels, they will seek other channels.
> 2. The governmental decision process in the United States is so diffuse that groups must hire lobbyists to give them eyes and ears at the seat of government--as necessary insurance.
> 3. Americal /political/ parties are so heterogeneous that they must compromise group interests rather than clearly speak for them.

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[1] Lester W. Milbrath, The Washington Lobbyists (Chicago: Rand McNally & Company, 1963), p. 156.

[2] Ibid., quoting James Deakin.

> 4. . . . Interest groups in the United States have almost abandoned working through parties and instead have hired lobbyists to secure policy representation.[1]

Congressmen appear to consider the primary justification for the lobbyist to be that he serves as a vehicle for conveying information and opinion from various segments of the public to the Congress.

> It is especially important that the lobbyist be well-informed on the subject of concern to his organization; but he should also know a great deal about the legislative and political process and should be widely read and well-informed on the major problems of contemporary society.[2]

Today's lobbyist has earned the reputation of being an expert, competent and well-informed in his field.

Functions of the Lobbyist

Congressional Committees

The Buchanan Committee described the role of yesteryear's lobbyist in congressional hearings thus:

> In the days when lobbying meant little more than unabashed bribery, committees of Congress were the favorite focus of the old lobby barons. Then, as now, crucial decisions were made in Committee, and men having entree to them could quietly make the necessary arrangements. The committees are even more important in the modern legislative process, but with the institution in 1911 of open hearings on all major legislation the possibilities of easy influence diminished.[3]

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[1] Ibid., p. 199. [2] Ibid., p. 141.

[3] U.S., Congress, House, Select Committee on Lobbying Activities, General Interim Report, Report No. 3138, 81st Cong., 2d Sess., 1950, p. 26.

Congressional committees hold hearings on every major bill, and all lobby groups concerned are anxious to testify. The typical lobbyist today is sophisticated enough to realize that testimony presented at congressional hearings may have doubtful value in influencing the committee members,[1] many of whom may have already made up their minds. However, students of lobbying disagree on this point. Scott and Hunt's study[2] indicated that testifying at hearings was the single most effective lobbying technique and provided the most appropriate forum in which lobbyists could plead their case. Meanwhile, Charles L. Clapp said:

> If the purpose of testifying extends beyond the desire to impress the organization's membership with the vigor and activity of its leadership, there are skeptics who believe the results disappointing.[3]

Zeigler considers the lobbyist's testimony at hearings to have marginal value, stating:

> If the hearings are given good press coverage, there is the opportunity for an interest group to pick up some inexpensive publicity. While this is of limited value in influencing the outcome of the legislation, widely publicized testimony at least gives the lobbyist the opportunity to demonstrate to his organization that he is doing his job properly.[4]

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[1] A more detailed discussion of the congressman and the lobbyist is presented later in this chapter.

[2] Margaret A. Hunt and Andrew M. Scott, Congress and Lobbies--Image and Reality (Chapel Hill: University of North Carolina Press, 1966), p. 77.

[3] Charles L. Clapp, The Congressman--His Work as He Sees It (Washington: The Brookings Institution, 1963), p. 169.

[4] Zeigler, Interest Groups in American Society, p. 256.

Nevertheless, congressmen generally give apparent attention and consideration to a lobbyist's testimony before a committee. While they tend to discount the effectiveness of lobbying tactics, the fact remains that it is easier to stop a bill at one hurdle in a legislative passage than to get it over eight or ten hurdles and signed into law. Thus, Congress's own rules and procedures afford the lobbyist a substantial advantage by making it easier to defeat legislation than to enact it. With respect to the success of a given legislative proposal, the committee is usually more important than the whole House or Senate, the members of congressional committees exercising life or death power over the outcome of legislation. Thus, access to these members is a key part of the lobbyist's strategy. In fact, if the goals of the lobbyist conflict with those of the committee chairman, he must devise a scheme of circumventing the chairman. The committee staff can also provide a useful point of access to the committee's decision process, and many lobbyists prefer to confer with staff members than with the congressmen.

There is little evidence of the ability of today's lobbyist to keep members of committees in his "vest pocket," or of the corruption that Woodrow Wilson, as a student of government, observed long before he became an active participant in politics. He "blamed the committee system, under which most important legislation is framed and given its original impetus, for most of the skulduggery."[1]

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[1]Kenneth G. Crawford, The Pressure Boys: The Inside Story of Lobbying in America (New York: Julian Messner, Inc., 1939), p. 42.

One of Milbrath's congressional respondents evaluated lobbyists' testimony as follows:

> The information we get from lobbyists is appreciable but not substantially important. . . . I like to get lobbyist information through hearings and get it on the record. Then people can see the information and put it to the acid test. The opponent is especially important here; he checks the information and challenges it once it is on the record. An opponent is likely to quickly catch an error and call it to account.[1]

Congressman Emanuel Celler (D-N.Y.) felt that there was "nothing more informative and helpful to a legislative committee than to hear the views of competent, well-matched advocates on the opposite sides of a legislative issue."[2]

The Information Function

Today's congressman feels that he is not much more obligated to a lobbyist when he avails himself of his information facilities than he would be to the information clerk at a local airport. One reason that the information function does not give the lobbyist greater leverage is that he does not have a monopoly on information.

The congressman's need for accurate information provides the lobbyist with his best opportunity to influence policy. In nearly all of his influence attempts, the lobbyist competes with numerous other would-be

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[1] Milbrath, The Washington Lobbyists, p. 308.

[2] Emanuel Celler, Pressure Groups in Congress, Vol. 319 of Unofficial Government: Pressure Groups and Lobbies, ed. by Donald C. Blaisdell (Philadelphia: The American Academy of Political and Social Science, September, 1958), p. 7.

influencers. The lobbying process is essentially a communication process, and the task of the lobbyist is to find ways to communicate more effectively than his "opponent" in order to influence the decision makers.

An important self-balancing factor that eases the impact of lobbying on legislative decisions is that nearly every push in one direction stimulates an opponent or coalition of opponents to push in the opposite direction. Curiously, many lobbyists welcome opposition because, without it, they might be unemployed.

Just as President Johnson is acutely aware of his alleged "credibility gap" with the American public on Vietnam and other key issues in 1968, today's lobbyist is conscious of the image he projects to the legislator. Perhaps his most important task is to insure favorable reception of his position by the decision makers.

A quotation from one of Milbrath's lobbyist respondents emphasizes the necessity for credibility:

> A reputable lobbyist must be very careful whom he represents. He may lose a great deal of prestige if he represents cases or clients that may come into conflict. It is extremely important that a congressman think of a lobbyist as a kind of doctor that he can depend on. Unless a congressman has real confidence in a lobbyist, that lobbyist simply does not have much influence. The greatest compliment one can get is for a member of Congress to say, "Whatever that fellow tells you, you can depend on it."[1]

As merchants of information, most lobbyists are especially careful never to present inaccuracies or distortions. As a matter of fact, some lobbyists have discovered that it helped their presentation to state

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[1] Milbrath, The Washington Lobbyists, p. 211.

both sides of an argument. A balanced presentation carries an aura of objectivity and self-restraint that is likely to appeal to the decision maker.

With such a great number and variety of demands on the limited time and attention of the decision makers, the lobbyist must develop rapport with key decision makers to insure access to the legislators. This relationship must be built on trust and integrity. The decision makers' acceptance of a lobbyist's views can be gained only if the lobbyist builds a reputation for reliability. James Deakin says that virtually every lobbyist views his position in more practical terms:

> I've got a living to make in this town. I can't afford to mislead a congressman to gain an advantage on one particular issue. I will be around long after that issue is gone, and so will the Congressman.[1]

Despite the fact that legislators control the setting up and enforcement of the rules of trust and the discretion for admitting a lobbyist to the trust relationship, the flow of information is not a one-way process. Often, the congressman contacts the lobbyist in search of factual data, as witness John E. Heyke's (Chairman of the Council of Local Gas Companies) testimony before the McClellan Committee:

> It was not long after the opening of the Washington office was announced /1955/ that inquiries began to come from members of the Senate and their staffs, seeking factual data which brought the staff of the Council into communication with members of the Senate and their staff.[2]

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[1] James Deakin, The Lobbyists (Washington, D.C.: Public Affairs Press, 1966), p. 194.

[2] U.S., Congress, Senate, Special Committee, To Investigate Political Activities, Lobbying, and Campaign Contributions, Hearings, before a special committee, Senate, 84th Cong., 2d Sess., 1956, p. 210.

Deakin says that the lobbyist considers his research activities second in importance only to personal contacts with individual congressmen.[1] However, congressmen must carefully evaluate every research report in terms of the method, the reputation of the researcher, and the strength of the impact of the findings. While the mere availability of research and information does not guarantee that all possible points of view will be brought out, the lobbyist generally has a factual basis for his messages, especially when he provides facts about how a contemplated action will affect his own group.

Some lobbyists estimate that fully half of the bills dropped in the hopper, many of a highly technical nature, are written in whole or in part by lobbyists.[2] Much of the research effort of the lobbyist is directed toward the drafting of legislation and ghostwriting of speeches to be given on the Senate or House floor or as testimony before congressional committees.

Often a minor, generally overlooked incident provides the clue to the extent of the lobbyist's activities, such as speech writing, as illustrated below:

> During the Senate debate on the reorganization bill in the second session of the Seventy-fifth Congress, /Senator Edward R./ Burke /D-Neb./ and Senator Harry Byrd /D/ of Virginia made speeches condemning the administration measure. They spoke at different times. Neither listened to the other. When the Congressional

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[1] Milbrath, The Washington Lobbyists, p. 227.

[2] Deakin, The Lobbyists, p. 6.

> Record came out the next day it was discovered that they had said precisely the same thing in precisely the same way. The texts of the two speeches followed each other word for word, paragraph after paragraph. The speech obviously had been furnished in duplicate by some outsider interested in beating reorganization.[1]

In fact, a large portion of the Congressional Record is commonly viewed as free propaganda for interest groups.

Collaboration

Virtually every major legislative issue that comes before Congress involves collaboration between different interest groups and frequently includes governmental decision makers. This collaboration is brought about by the theory that the public interest consists of the sum of the private interests and that a broadened base of support facilitates the passage of a particular policy proposal through Congress. The following is an early example of such collaboration between organizations:

> The lobbyists for industry and management in the 1920's had /an/ . . organization called the "Monday Lunch Club." These lobbyists, representing such groups as the National Petroleum Association, the American Meat Packers, and the Portland Cement Association, met every Monday for lunch to exchange information of mutual interest. More than sixty separate lobbying organizations were part of this group, and their members could pool a vast reservoir of invaluable intelligence on the House and the Senate for the entire business community.[2]

Milbrath describes the lobbyist's shifting pattern of opponents from one issue to another as a "whirlpool of groups." This pattern of

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[1]Crawford, The Pressure Boys, p. 31.

[2]Neil MacNeil, Forge of Democracy--The House of Representatives (New York: David McKay Company, Inc., 1963), p. 224.

"whirlpools" will take shape for a battle, and, once it is over, the pattern will break up, shift, and reform for the next battle. The anticipated behavior of opponents is an important determinant of a lobbyist's strategy.[1] The most important service that the lobbyist and his governmental collaborators perform for each other is the mutual exchange of information. Collaboration is more readily accepted by the governmental decision makers when it involves groups with common policy interests, as opposed to the rare collaboration that might pair such organizations as the National Association of Manufacturers and the AFL-CIO lobbying for the same issue. These trade-offs between organizations are the cause of Washington being labeled as a "big nest of back scratchers."[2]

However, this collaboration also makes it difficult for a lobbyist to develop a sense of profession in lobbying:

> Among lobbyists, their primary affiliation is with their employer, and a lobbyist has to preserve his detachment from the other lobbyists with whom he works. You may have to work with the guy one day and fight him the next. Therefore, you can't develop a very close affiliation. The successful lobbyist is one who lives his job for twenty-four hours a day. One cannot be palling around too much. It would be similar to generals of opposing armies belonging to the same officers' club. Yet there is still an unexpressed feeling among lobbyists of doing the same thing. These are people; even though they would be working against each other at times, they are still engaged in the same kind of endeavor and activity, and they feel this. Although lobbyists get together in groups to discuss tactics on specific problems, they do not exchange their personal techniques or approaches to the solution of problems.[3]

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[1] Milbrath, The Washington Lobbyists, p. 170.

[2] Ibid.

[3] Ibid., p. 135.

Party Politics

A central question concerning the ethics of lobbying is: When is a campaign contribution a legitimate donation to a legislator and when is it an inducement for the purpose of influencing his vote on legislation? Currently, candidates spend as much as several million dollars to run for the Senate from a populous state, and as much as $50,000 to $100,000 to get elected from a House district. This suggests their need for extensive contributions from many sources. While the campaign contribution is a potentially important lobbying weapon, Milbrath views the lobbyist's hesitancy to build contracts with any one party as being derived from two factors:

> First, most lobbyists believe that political parties per se have little influence on governmental decisions.
>
> The second factor leading to little party contact is lobbyists' belief that, since they must work with elected officials from both political parties (nearly all respondents report that they work "both sides of the aisle"), they try to avoid becoming too closely identified with one party.[1]

Most lobbyists have had little or no experience in party politics, and many of those with such experience dropped their political activity when they became lobbyists because they felt personal political activity is of negligible value to the kind of influence they are seeking. It is true that a good many Washington lobbyists are frequent contributors to party committees and to individual members of Congress. However, when they give, it is "in the interests of good government" or "because Congressman

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[1] Ibid., p. 207.

So-and-So is an old and dear friend of mine." The lobbyist often assigns to pure coincidence the fact that the Congressman whom he supports "just happens" to be a member of a committee handling legislation in which he is interested. It appears that improved methods for financing political campaigns would alleviate the dependence of elected officials on lobbyists for campaign funds.

Apparently the party with which a man identifies has relatively little importance in his selection as a lobbyist.[1] The access which a lobbyist must achieve extends to decision makers of both parties, since the informal structure of power in legislative bodies cuts across party lines.

One basic principle of lobbying that tends to encourage the lobbyist to participate in party politics when the opportunity presents itself is:

> It is not enough merely to lobby incumbent congressmen. There may not be enough of them who see things the way you do. You have to get out and try to elect some more.[2]

It remains a characteristic of modern-day lobbying that the flow of communication between lobbyist and party would probably be much heavier if the lobbyist perceived party officials and organizations as having substantial power over governmental decisions. This view contrasts sharply with Crawford's remark in 1939 that "The most advantageous position for a

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[1] Ibid., p. 277.

[2] Deakin, The Lobbyists, p. 144.

lobbyist is a place on the national committee of the party in power.[1]

The Congressman and the Lobbyist

In each session, the Congress is expected to pass on complex issues, often involving highly technical data. No member has the energy, knowledge, time, or the breadth of interest to be familiar with the full range of twentieth-century issues thrust upon him. The lobbyist, by performing his information function, can help the individual legislator sort out fact from fiction and help to guide him through the maze of proposed legislation that may affect the lives of millions of citizens.

Associated with the low esteem that most Americans accord politicians is the fact that they also find it easy to believe that Congress is a tool of vested interests. However, the only direct influence that a lobbyist can have on congressional decision making is achieved through the individual congressman or his staff. While a lobbyist can try to influence a congressman, whether the congressman actually feels that pressure is debatable. The Scott and Hunt study indicated that, contrary to popular belief, most of the congressional respondents did not feel pressure from lobbyists in either their areas of peripheral or working interests.[2]

Congressmen generally accept the lobbyist's contacts as an expected part of their daily routine. The congressman is not a focal point

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[1]Crawford, The Pressure Boys, p. 8.

[2]Hunt and Scott, Congress and Lobbies, p. 56.

of ceaseless lobbying out of concern for his area of special interest, although he is more likely to be contacted concerning controversial issues than those with less public attention.

With the growing complexity of the American society, the legislator tends to become a "broker" among competing interests in the political marketplace rather than a direct representative of the people. Despite the shift of emphasis toward the grassroots approach,[1] some authorities like Milbrath still believe that the most effective lobbying tactic is the lobbyist's personal presentation of his case to the decision maker.[2] There are still many active lobbyists who devote substantial portions of their energies toward the goal of establishing connections. One of Milbrath's respondents summed up the utility of contacts in this way:

> The main advantage of having contacts is that you don't have to qualify yourself every time that you approach someone. If you know people well enough, you may be able to get a hearing without delay; of course, if they know you well enough and don't like you, you may never get a hearing.[3]

When the lobbyist makes personal presentations, he does not aim his message indiscriminately. For each legislative issue there is a key man or group of men to whom others will look for guidance. The lobbyist tries especially hard to persuade these men. However, the competent lobbyist does not dissipate good will on any but the most important issues,

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[1]The "grassroots approach" is discussed in more detail later in this chapter.

[2]Milbrath, The Washington Lobbyists, p. 215.

[3]Ibid., p. 65.

which may explain why lobbyists spend so little time dealing directly with members of Congress.

The effectiveness of a lobbying group is noticeably affected by the calibre, personality, and approach of its representative. However, it is probable that the success of the contact man depends even more upon the degree to which the legislators agree with the professed ideals of the group for whom the lobbyist is speaking. This, in turn, depends more upon the personal ideology of the legislator than upon the ability of the lobbyist to manipulate or persuade.

An estimate of the importance of a lobbyist's participation or contribution during a congressional controversy is likely to be greatly influenced by the individual congressman's impressions of that lobbyist. If the policy positions of well-known interest groups receive widespread attention, congressmen are likely to attribute importance to those groups. Most congressmen feel that the impact of any one organization rarely extends beyond its special sphere of interest. These well-known groups are usually the ones that members of Congress or their staffs will contact for such services as writing speeches, drafting legislative bills, and so forth.

Since relatively few legislators are actually changed by lobbying from a hostile or neutral position to a friendly one, most lobbyists "work their own side of the fence." The chief lobbyist of one of the Nation's most prominent farm organizations said, "Our principal activity is to provide

factual material, speeches, and other services to the senators and congressmen who are already on our side."[1] A large part of all lobbying is aimed at persuading a congressman to devote more of his limited time and energy to a specific bill or policy, or, in other words, enlist him as a champion for a particular cause.

As mentioned previously, the lobbyist spends little time with the legislator, preferring instead to contact the congressman's staff assistants. Contacts with these staff members facilitate the flow of information to and from the congressman, and in certain cases have provided the lobbyist with valuable "inside" information. However, not every lobbyist wants this "intelligence":

> I don't have any sources of inside information, and I don't want any. I would rather not be told things in confidence. About everything that is going to happen in this town I found out yesterday at Burning Tree Country Club. Then, if I have been told this thing in confidence and it leaks out, the person who has told it to me calls me and accuses me of having let it go. Actually, it is almost impossible to keep things quiet in this town. Those lobbyists who pretend they have inside information in order to try and get clients are 99 per cent bluff. Anybody who hires them is likely to get disappointed because there is very little inside information in this town. A contact is useful only to the extent it gets you a hearing. I have a thousand people I can call, and if a phone call is put through, they will listen.[2]

Most congressmen view the lobbyist merely as a source of information and opinion. The staff members, on the other hand, aware that

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[1]Donald R. Matthews, U.S. Senators and Their World (Chapel Hill: The University of North Carolina Press, 1960), p. 182.

[2]Milbrath, The Washington Lobbyists, p. 261.

information from lobbyists and interest groups is generally slanted, tend to evaluate it carefully. They consider the motives and the special interest of the organization in making their judgment. However, congressmen clearly benefit from the presentation of different arguments and viewpoints. They feel that it is the privilege of the lobbyist to propose, but that it remains their unquestioned prerogative to dispose.[1] Of course, the lobbyist is delighted to be able to propose, for he knows no better way to affect policy than to be in on its creation. Most lobbyists feel that they are making an important contribution to the legislative process; hence, the frequency of their consultation on policy formulation is, in their judgment, a partial measure of their success. One congressman was mildly critical of the lobbyist's contribution to the formulation of broad policy. "I doubt if the lobbyist has much to say except when he gets down to specific language of particular sections of bills; he is not very effective on broad policy."[2]

Lobbyists make it difficult to achieve broad national agreement on which legislative actions are best for the Nation as a whole. There is almost the threat that too much reliance on lobbyists to take the initiative can result in failure of urgent problems to get adequate governmental action. A common complaint is that lobbyists (i.e., business groups) serve the selfish minorities to mislead both the people and their

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[1] Hunt and Scott, Congress and Lobbies, p. 59.

[2] Milbrath, The Washington Lobbyists, p. 353.

representatives into the belief that great wealth for a small number will somehow trickle down through the system to the humblest citizen. These minorities then pay lip service to the national welfare but place primary emphasis on the specific interests of their own group. The "power of the few" may not be as mighty as it was in the past, but the fact remains that Congress may be temporarily frightened but is "seldom influenced by the demands of underdog citizens. It is the well dressed and the well heeled, who can afford to entertain, who have the most effect on legislation."[1]

A Democrat who did not doubt the ability to influence legislation had a more serious criticism:

> I feel very strongly that the lobbies need to be exposed. Lobbyists mislead their own members much more than they inform Congress. They seem determined to keep their membership inflamed in order to justify their existence. Nine-nine per cent of the information they disseminate is misleading and many false statements are made. The reaction of the public shows that the people just don't know what is going on. The lobbyists as they presently perform their responsibilities are not rendering service to the Nation or to the people they represent. For the most part, they are pretty intelligent men, and I can't understand why they do, but nearly all of them seem determined to distort the true picture in order to justify their own existence.[2]

The lobbyist does not always consider it part of his job to achieve or maintain the proper relationship between his group's interests and the general public interest. A handy tool for any lobbyist is something he calls "feel"--adaptability and intuition honed by past experiences "on the hill."

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[1]Crawford, The Pressure Boys, p. 45.

[2]Clapp, The Congressman, p. 177.

The modern lobbyist normally utilizes this "feel" to get the most he can for his clients in any given situation, regardless of what the public interest might be.

Although it may sound exciting to be a lobbyist and to be intimately involved (directly or indirectly) in helping legislators work out compromises and adjustments on major legislative measures, one lobbyist describes the drudgery of the work:

> Toward the end of the session the day-to-day constant haunting of the halls of Congress and office buildings of the members in order to urge them to take a position on a critical vote is the . . . /part/ I like the least. We always have such days of pressing legislative work, especially on . . . bills toward the end of the session, and in these urgent situations there is sometimes a shift in strategy, and you need to contact the members and change what you told them the day before. In these situations, months of work is at stake. You also realize that the members of Congress are very busy and you hate to press them for time, and yet you feel that you have got to do everything that you can do. Perhaps it would not change the vote one bit if I just sat up in my office and did nothing, and yet I feel that I must go down and do everything I can.[1]

Many members of Congress work intimately with lobbyists to exert pressure on fellow members and to excite public sentiment in support of desired policies. Some congressmen even "store up good will with lobbyists by holding hearings on bills that really have no likelihood of passage, giving the lobbyist an opportunity to appear to defeat the bill."[2] However, to preserve open communications channels to the decision makers, the lobbyist must appear to be concerned with the public welfare in addition

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[1]Milbrath, The Washington Lobbyists, p. 129.

[2]Ibid., p. 233.

to the advantage of his own group. The congressman's "shotgun in the closet" is the threat of cutting the lobbyist's access, which can be used as a sanction to force the lobbyist to behave according to the congressman's desires.

If Congressman John J. O'Connor (D-N.Y.) had taken the advice he gave to lobbyists when he was in the House, there would be few lobbyists around today; nor would O'Connor have been successful in his new position as a "legislative representative" three years later. In 1936, he delivered an impassioned speech from the floor:

> I have never seen any effect a lobbyist ever had in Washington, but they are, at the same time, a nuisance to members. They claim to do what they never can do. . . . In my opinion, the janitor of the building has as much influence as any lobbyist who ever appeared in Washington.[1]

But some of the best advice offered to the lobbyist on maximizing his influence was in the form of four basic rules presented by a lawmaker during a Brookings Institution study:

> 1. They /the lobbyists/ should know the facts of the situation with which they're dealing.
> 2. They should be courteous in all their discussions with congressmen, whether these members happen to agree with them or not.
> 3. They should know the opposition and the kinds of arguments which are being advanced by the opposition.
> 4. They should stick to the facts.[2]

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[1]Crawford, The Pressure Boys, p. 19.

[2]Clapp, The Congressman, p. 179.

In almost any major legislative battle, the lobbyist chooses from the direct-contact techniques described above and expertly interweaves them with another method, the indirect or "grassroots" technique.

Grassroots Lobbying

Taking the issue to the people is one of the basic techniques used by today's lobbyist. This indirect advance upon the congressman through his constituency is commonly referred to as "grassroots lobbying." The lobbyist rarely has the capacity to exert pressure on congressmen in the sense of coercing them, but he nevertheless can exercise a degree of influence in a roundabout way. The massive, heavily financed grassroots campaign is the trademark of the modern lobbyist, not the "cash under the table," "babes in the bedroom" approach of his nineteenth-century counterpart.

In 1950, the Buchanan Committee took note of the rapid increase in the lobbyist's use of the grassroots approach:

> What it [grassroots lobbying] amounts to is this: Rather than attempt to influence legislation directly, the pressure group seeks to create an appearance of broad public support for its aims, support which can be mobilized when the legislative situation demands it. This process may bear little resemblance to the lobbying of 1880, but the intent behind it and the end results are unquestionably the same; namely, to influence the determination of legislative policy.[1]

The mobilized "force in readiness" referred to by Buchanan is firmly endorsed by the Chamber of Commerce's Legislative Handbook:

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[1] U.S., Congress, House, General Interim Report, p. 29.

> Leaders of all associations--national, state, and local--should be prepared to rally their memberships at a moment's notice to support or oppose a given legislative issue.[1]

A lobbyist emphasized the importance of timing when considering the use of "force in readiness":

> It is important to direct the legislative effort at the level where a bill is. . . . When a subcommittee is considering a bill, it's useless to turn one's energies to the full committee, and it is too early to alert the membership of the association to contact the entire House. A great deal of effort is wasted and it even tends to dry up possible sources of support if one pushes the wrong action at the wrong stage and before the thing is ready to be voted on. In order to avoid this, we withhold all bids for support until the proper time. Occasionally we get caught short and have to send out five thousand telegrams in a hurry to get the support rolling in, but this cost is worth it to avoid wasting our efforts before the time is ripe.[2]

Congressman Celler also noted the shift in lobbying tactics toward the grassroots approach. "Realization that ultimate power to affect legislation resides in the people has given new direction to pressure group activities, which now seek to influence legislation by remote control."[3]

Although not universally true, the most persistent motivation of a congressman is to maintain and enhance his reelection possibilities. The congressman who does not consciously or unconsciously strive for this end will generally be ejected from the system. One congressman put it this way:

> Well, of course the views of the constituents are always uppermost in the politician's mind. We jokingly make a distinction

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[1]Chamber of Commerce of the United States, Legislative Handbook for Associations (Washington: Chamber of Commerce of the United States, 1962), p. 13.

[2]Milbrath, The Washington Lobbyists, p. 218.

[3]Celler, Pressure Groups, p. 8.

between a politician and a statesman, but we are all politicians, too. As statesmen, we are delegated to represent not only the views of our constituents but also their best interests. If we could count on the people being properly informed, well then, their views would be all that is necessary, but unfortunately that cannot always be counted on.[1]

Although the lobbyist does not have significant power at the polls, he tries to demonstrate to the individual congressman that a particular course of action will help him with his own constituency. If this direct-contact approach is not successful, the lobbyist may seek alternative routes, such as stirring up the public at the grassroots, to gain more effective access to the lawmaker.

If the campaign contribution were the only effective way in which cash was used to influence legislation, the hundreds of millions of dollars spent on grassroots lobbying would be money wasted, but such is not the case. As the result of grassroots lobbying campaigns, the voice of the voter, when orchestrated by the lobbyist into a mighty symphony of pressure, can sound as loud in the ear of the legislator as the purring tones of the campaign contributor.[2]

Many lobbyists believe that mass-mailing campaigns are too crude and have too many limitations to be effective. However, the Chamber of Commerce feels that most congressmen depend upon letters for support and guidance.

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[1]Milbrath, The Washington Lobbyists, p. 334.

[2]Deakin, The Lobbyists, p. 101.

> It is important in a democracy that businessmen help keep their legislators informed on the probable effects of the proposed legislation upon the economy in general and their specific industry or profession.[1]

The organizations that use them think of letters from the grassroots as a reinforcing tactic to back up other methods of communication. A lobbyist from a different business group said, "We don't think mass mailings are very effective. About twice a year we do have mass mailings but it's mostly to keep the membership happy."[2]

The evidence indicates that most congressmen do not feel they are significantly influenced by mass mailings which they have reason to believe were instigated by lobbyists. In most congressmen's offices, the "inspired pressure" mail is segregated from the "genuine" mail, and acknowledged with a form-letter reply. This pressure mail is considered to be a most untrustworthy manifestation of public opinion, and congressmen will often vote against the weight of it. Other congressmen may be only mildly irritated by the organized letter-writing campaigns and merely discount the letters as an inaccurate reflection of constituent opinion and the work of a lobbyist group. However, there does seem to be common agreement among authorities that, "Considered singly, the letter-writing campaign is probably the <u>least</u> effective and <u>most</u> relied upon lobbying technique."[3]

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[1] Chamber of Commerce, <u>Legislative Handbook</u>, p. 26.

[2] Matthews, <u>U.S. Senators and Their World</u>, p. 192.

[3] Zeigler, <u>Interest Groups in American Society</u>, p. 272.

Closely akin to the grassroots method are the techniques of publicity and propaganda, perfected in today's world of advertising, of influencing public opinion through the mass distribution of books and pamphlets, full-page advertisements in the newspapers and periodicals, and other mass-media assaults. It has become a steady trend for lobbyists to expend more of their energy and resources in the hope of creating a more generally favorable climate of opinion in the society as a whole. The increased use of the mass-media communication to reach the people faster, more often, and in greater numbers is perhaps the most significant recent development in lobbying activity.

"If the danger of direct contact lobbying is that the balance of interests may be upset by private, exclusive arrangements, the danger of indirect grassroots lobbying is distortion of the facts."[1] And yet, while the U.S. Supreme Court was upholding the constitutionality of the Federal Regulation of Lobbying Act of 1946 during the Harriss case in 1954, it construed the law narrowly, eliminating its coverage of the grassroots technique.

The Businessman as a Lobbyist

The U.S. Government is a multi-billion-dollar customer for goods and services, making lobbying an important activity for today's businessman. Another factor contributing to the influx of business

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[1] Deakin, The Lobbyists, p. 194.

lobbyists on the Washington scene has been the extension of federal regulation of business activity.

For many centuries, businessmen have welded themselves into organizations when it appeared to them that they had a common interest that could be furthered by collective action. The beginning of the capitalistic system in the late Middle Ages introduced the idea that the making of a profit should be the fundamental motive underlying a business venture. Since businessmen want to make money, it is reasonable that the achievement of a satisfactory margin of profit is a major purpose behind the formation of associations of businessmen.[1] These groups normally send lobbyists to Washington because a policy objective is in possible jeopardy.

Although no accurate tally of the number of business lobbyists is available, the membership rolls of the Washington Trade Association Executives could serve as an excellent lobbyist directory. Nearly all of the business associations represent the industry before legislative committees when public action is desired or when public action threatens to impinge unfavorably on association members. Not unlike labor, business likes to be left alone except when it needs government help.

Taken in the aggregate, business groups are probably the single most powerful pressure force, tending toward a conservative position on most legislation.[2] This observation by the Congressional Quarterly Service

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[1] Zeigler, Interest Groups in American Society, p. 93.

[2] Legislators and the Lobbyists (Washington: Congressional Quarterly Service, 1965), p. 11.

correlates well with Milbrath's comment:

> Republicans are significantly more likely to believe unqualifiedly that lobbying is healthy for our democracy. One can only speculate that Democrats are generally more concerned with reform and change and may be less inclined to give blanket approval to existing institutions.[1]

There appears to be a basic explanation for business getting the most out of the lobbying system. First, it can afford the best and the most talent. Second, it knows precisely what it wants--freedom from restraint, lower taxes, subsidies where possible, and big profits.

One highly respected liberal congressman described the influence of the lobbyist groups in this way:

> These pressure groups do complicate matters or influence congressmen more than just in the sense of how many battalions they have at election time. Maybe this is a confession of my own weakness, but if I receive a corporate or institutional position, it means a little more to me than an individual representation. This includes the whole spectrum of interest groups, from the Chamber of Commerce and NAM to the more radical unions, although of course the effect of the plea depends somewhat on the nature of the group making it.[2]

The two leading business organizations--the Chamber of Commerce of the United States and the National Association of Manufacturers--have been extremely influential in carrying on a high level of legislative lobbying activities. Deakin, discussing these two organizations, described the Chamber as the "personification of the large institutionalized lobbying

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[1]Milbrath, The Washington Lobbyists, p. 78.

[2]Clapp, The Congressman, p. 163.

organization."[1] The Chamber's grassroots effort, which it considers its most effective lobbying technique, consists in part of the publication and distribution of Nation's Business, Washington Report, and Congressional Action, the costs of which are not reportable under the 1946 Federal Lobbying Act. The Chamber would like to project a public image with a tone of statesmanship--a consideration of the interests of the Nation as a whole. However, this element is noticeably absent from these publications.

The function of the Chamber (or any other like group) as a source of legislative information is clarified in its own Legislative Handbook:

> A businessman needs to be informed on how specific legislation affects his business or is likely to affect it. In the face of growing government control over business through legislation of various kinds, the individual should be able to look to his national, state or local association for information. Because of the complexity of the ever-increasing amount of legislation it has become helpful for many associations to put out a newsletter or bulletin /à la Washington Report/ informing their members of legislative developments.[2]

Although legislative action in Congress is not the primary function or purpose of most business associations, it is often an important part of an association's program. These associations know that a forthright, timely presentation of helpful facts and honest views before legislators is necessary for success. The president of the Socony-Mobil Oil Company of New York, A. L. Nickerson, explained a typical way that a business association becomes involved in pending legislation:

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[1]Deakin, The Lobbyists, p. 133.

[2]Chamber of Commerce, Legislative Handbook, p. 21.

> We have been extremely interested in Federal legislation. We consider that each one of our directors has the obligation of being generally informed of legislation that may be under consideration by the Congress in that director's portfolio or area. However, the primary responsibility for following legislation is in our office of the general counsel. Our general counsel is assisted in carrying out these responsibilities by two legislative representatives. His office will customarily analyze any bill which appears to be of general interest to our company. He will refer that analysis to the one or more directors who may be interested, and together they will decide whether or not there is any action that our company should take with respect to a given bill. If they do so decide, that action might take the form only of disseminating information to interested people in the company. But if we have a stronger feeling for or against such legislation, we might elect to have those views expressed to a trade association, such as the Chamber of Commerce, the National Association of Manufacturers, the Foreign Trade Council, or other trade associations of that kind.
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> If we feel very strongly about legislation, as we did in the Harris-Fulbright Act, we may take a somewhat greater interest in the legislation, and in that case we could prepare witnesses for appearance before committees, we could develop educational material which we would make available to Congressmen, or we might, as we have in some cases in the past, ask our legislative representatives to communicate our views to certain Members of the Congress.[1]

These associations are responsible to their industry and the economy on the whole to insure that Congress is amply provided with pertinent information. The legislative committee (or other appropriate arm) of an association studies and interprets the issues and informs and motivates the association members to contact their legislators, either personally or by means of correspondence, or both. It attempts to show the legislators why they should act in accordance with the views of the industry. Business management is developing a class of paid experts who, because of their experience and technical knowledge of politics, are capable of

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[1]Senate, To Investigate Political Activities, Hearings, pp. 416-417.

conducting the group's legislative affairs. However, a current trend in this area is placing the lobbyist in the role of a hired man who brings in the president and vice presidents of the organization and coaches them on the bill, so they can effectively appear before committees.[1]

Perhaps in response to the common accusation that "some lobbyists spend almost as much time lobbying their clients as they do lobbying Congress," few businesses leave the sole responsibility for the promotion and protection of their political interests to their respective associations. Most of the large corporations, and many of those not so great, retain Washington law firms or other specialists as their legislative watchdogs.

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[1] V. O. Key, Jr., Politics, Parties and Pressure Groups (New York: Thomas Y. Crowell Company, 1964), p. 133.

CHAPTER III

THE PRE-1946 LOBBYING ACT ERA

> Congress shall make no law abridging . . . the right of the people . . . to petition the government for the redress of grievances.
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> --First Amendment, U.S. Constitution

The right of petition became part of the Constitution with the adoption of the Bill of Rights in 1791. The framers of the Constitution felt that elective representation of the population in Congress was not sufficient to satisfy the needs and desires of society, which was viewed as an arena of competition and conflict. A guaranteed right of petition to the government was deemed necessary, and is among the oldest of our liberties.

The practice of lobbying "started a good three centuries ago, when Englishmen seeking special privileges from Members of Parliament customarily gathered in the outer lobbies of the House of Commons . . ."[1] Of course, it remained for the Americans to perfect and expand the practice into an institution.

The Nineteenth Century

Alexander Hamilton's Philadelphia Society for the Promotion of National Industry, formed in the early 1800's, can claim credit as the

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[1]Stephen M. Young, "The Case for Lobbies," Playboy, January, 1968, p. 178.

first business lobby initiated for the purpose of influencing legislation. Like today's Chamber of Commerce of the United States, this group was interested in tariff legislation.[1]

The classic era of lobbying in the United States was during the latter half of the nineteenth century. Throughout that period, lobbying was characterized by the preservation and encouragement of private property. In these years, the public at large was victimized by a few men who prospered. The congressmen who accepted fees from business interests were merely men of their times. The public appeared unconcerned that these same congressmen were voting on legislation affecting these interests.

In the mid-1800's, the changeover of the Nation's economy from agricultural to industrial was accompanied by swarms of lobbyists descending upon Washington. The flamboyant era of "blondes and booze" and raids on the national treasury was under way. Deakin explains how the nineteenth century businessman was running Congress:

> The basis for the unrestrained lobbying of the nineteenth century was the belief that anything business (meaning the rich) did was quite all right, simply because it was business that was doing it. The government of the United States, in effect, existed solely to serve private enterprise and to advance its interests.[2]

Samuel Colt employed typical nineteenth-century lobbying tactics when he wanted to renew the patent on his revolver in 1854. He retained one congressman on a $10,000 contingent fee to insure "smooth sailing"

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[1]Schriftgiesser, The Lobbyists, p. 6.

[2]Deakin, The Lobbyists, p. 72.

for the renewal of the Colt patent and supplied three charming female "spiritualists" for the enlightenment of other congressmen.[1]

Most lobbyists were regarded by the rank-and-file members of the Congress as "pests" and it was not unusual for a member to tear up the calling card sent into the House or Senate chamber by a lobbyist requesting a conference with the congressman.

Senator Young cites a nineteenth-century senator's solution to the pesty lobbyists:

> The influential Senator Thomas Hart Benton of Missouri, truly a great U.S. Senator, was feeling the heat from lobbyists seeking a profitable shipbuilding subsidy. To their surprise, Senator Benton quickly agreed to help. But he pressed one condition: "When all vessels are finished, they will be used to take all such damned rascals as you out of the country."[2]

A fundamental point about lobbying is illustrated by the financial panic of 1857: there was just as much lobbying in that time of economic distress as in prosperous times. Private interests expected the people of the United States to protect them in bad times as well as good. In fact, the pressures for Federal Government aid after the Panic of 1857 far overshadows similar "pump priming" during the early days of the New Deal.

A direct ancestor of the 1946 lobbying law appeared in 1876, but only for the Forty-fourth Congress. The House adopted Congressman George F. Hoar's (R-Mass) resolution providing:

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[1]Young, "The Case for Lobbies," p. 178.

[2]Ibid.

> Resolved, that all persons or corporations employing counsel or agents to represent their interests in regard to any measure pending at any time before this House, or any committee thereof, shall cause the name and authority of such counsel or agent to be filed with the Clerk of the House; and no person whose name and authority are not so filed shall appear as counsel or agent before any committee of this House.[1]

The close of the nineteenth century saw the end of the heyday of lobbying giants like Thurlow Weed and Sam Ward, who said, "The way to a man's Aye is through his stomach."[2] The National Association of Manufacturers was formally organized in 1895. The early activities of the NAM, which are inauspicious in comparison with that group's current legislative program, were almost entirely concerned with the promotion of trade and commerce. The NAM did not flourish with these goals, and at the start of the twentieth century was regarded as something less than a dynamic organization.[3]

The Twentieth Century

It is only fair that David Truman's assertion that "1903 marked the beginning of a new organization [for NAM]"[4] serves as an introduction to the current century in which NAM stands as one of the two most important business associations in the United States today. NAM reoriented its goals as formal recognition of the increasing activity of organized labor

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[1] Deakin, The Lobbyists, p. 71. [2] Ibid., p. 62.

[3] Zeigler, Interest Groups in American Society, p. 111.

[4] David Truman, The Governmental Process (New York: Alfred A. Knopf, Inc., 1951), p. 81.

(AFL), which had increased in membership from less than 350,000 in 1895 to nearly 1,750,000 in 1903.[1]

The first spectacular expose of lobbying was the New York insurance investigation of 1905, which led to the enactment of many state lobby-control laws. However, the first of the modern congressional lobby investigations had to await President Woodrow Wilson's complaint (only two months after he entered the White House) that lobbyists were making boodle of the tariff laws in 1913. Wilson had previously exclaimed in one of his 1912 campaign speeches that "The masters of the government of the United States are the combined capitalists and manufacturers of the United States."[2] Wilson's charges signaled the beginning of a series of congressional investigations in lobbying activities, brought about partially by a growing public concern for preserving the national legislative processes, and partially because the lobbyists were beginning to realize that the old and often corrupt ways of the past would no longer be tolerated.

Garrett Committee

A June 29 article in the now-defunct New York World set off the 1913 "lobbyist explosion." The article, a detailed account of the NAM's undercover activities in the Nation's capital, was signed by Martin M. Mulhall, NAM's chief lobbyist since 1903. Mulhall's charges implicated many officials and members of Congress, resulting in Speaker James

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[1]Zeigler, Interest Groups in American Society, p. 112.

[2]Schriftgiesser, The Lobbyists, p. 35.

(Champ) Clark's (D-Mo.) appointment of a Select House Committee, headed by Majority Leader Finis J. Garrett (D-Tenn) to investigate the charges. Crawford outlines a detailed record of an almost incredible history of intrigue, intimidation, bribery, and solicitation by the NAM's high-pressure lobbyists in the capital.[1] In brief, the Garrett Committee established that the NAM carried several congressmen and the chief page of the House on its payroll and allegedly influenced appointments to several strategic committees.

The real backbone of the committee, Congressman William J. McDonald (P-Mich.),[2] chilled the NAM in a separate minority report:

> Their /NAM's/ plainly shown attitude was that the American Congress was considered by them as their legislative department and was viewed with the same arrogant manner in which they viewed their other employees, and that those legislators who dared to oppose them would be disciplined in the same manner in which they were accustomed to discipline recalcitrant employees.[3]

Of the seven congressmen accused of being "reached" by NAM, all but Congressman James T. McDermott (D-Ill.) were exonerated by the committee's findings. Although McDermott was proved to be deeply involved in Mulhall's activities, he was not expelled. However, on July 21, 1914, McDermott resigned, a completely discredited legislator.

As a result of the Mulhall investigation, the first lobby-control bill was introduced in Congress in a form similar to Hoar's 1876 House

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[1]Crawford, The Pressure Boys, pp. 46-50.

[2]Progressive Party from Michigan.

[3]Crawford, The Pressure Boys, p. 49.

resolution. Although the Mulhall case cast serious doubts on the ability of Congress to act independently of the lobbyist's "influences," the House version of the bill died in the Senate. A similar bill, introduced by Senator Thaddeus H. Caraway (D - Ark.) in 1928, was passed by the Senate but received no action by the House.

Although the NAM has altered its tactics following the Mulhall investigation, Cleveland's research indicates NAM's continued misfortunes consisted of opposing thirty-one of the thirty-eight major laws enacted between 1933 and 1941.[1]

While Wilson was on the campaign trail, incumbent President Taft was attending an April 22, 1912, meeting that established the membership regulations for the Chamber of Commerce of the United States. Taft's interest in the Chamber is exclaimed in its current edition of A Glimpse of the National Chamber, as follows:

> The Chamber of Commerce of the United States was formed on the recommendation of President William Howard Taft, who saw the need for "a central organization" to give Congress the benefit of the thinking of the business community on national problems and issues affecting the economy.[2]

Harwood Childs' Labor and Capital in National Politics is considered to be the authoritative account of the history of the Chamber, and accurately describes its conception:

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[1] Alfred S. Cleveland, "NAM: Spokesman for Industry?" Harvard Business Review, XXVI (May, 1948), 357.

[2] Chamber of Commerce of the United States, A Glimpse of the National Chamber (Washington: Chamber of Commerce of the United States, 1967-1968), p. 2.

> The Chamber idea seems to have taken place at an opportune moment, and the wide publicity given to the undertaking, the quasi-governmental endorsement of the move, the general feeling of insecurity among a large number of business interests during the political upheaval in 1912-1913 . . . served to facilitate somewhat the early problems of recruiting.[1]

Senator Hugo L. Black (D-Ala.), later to become a Supreme Court Justice, was referring to the Chamber of Commerce, the NAM, and hundreds of other trade associations when he warned the public in a 1935 radio speech that lobbying "had reached such a position of power that it threatens the government itself. Its size, its power, its capacity for evil; its greed, trickery, deception, and fraud condemn it to the death it deserves.[2]

Black Investigation

In 1935, Senator Black was chairing a Senate committee investigating lobbying by the utilities industry. This investigation won passage of the Public Utilities Holding Company Act, which requires utilities lobbyists to register with the Securities and Exchange Commission.[3]

Black's general lobbyist registration bill (S. 2512), passed by the Senate in 1935, applied to persons who engaged in lobbying to influence departments of the government as well as those engaged in legislative

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[1]Harwood Childs, Labor and Capital in National Politics (Columbus: The Ohio State University Press, 1930), p. 24.

[2]Deakin, The Lobbyists, p. 76.

[3]Congress and the Nation, p. 1549.

lobbying. Meanwhile, the House was approving its version of the bill (H.R. 11663), which applied only to persons engaged in lobbying before Congress for legislation. Although the conference report of H.R. 11663[1] considerably broadened the scope of the bill, the House defeated the conference report in 1936. Congressman Howard W. Smith (D-Va.) is often credited with the death of this bill by adding drastic amendments that doomed any chances of passage. In the same year, Congress approved another piecemeal registration act (the Merchant Marine Act) requiring maritime lobbyists to register with the Secretary of Commerce.

Lobbying is a type of activity that periodically demands that Congress "do something about it."

> Decision makers realize that the unethical behavior of an occasional lobbyist is by no means characteristic of the entire group; therefore, they demonstrate righteous indignation publicly, start an investigation, introduce reform bills, and wait for the public clamor to die down.[2]

Such was the legislative history of lobbying until the enactment of the Federal Regulation of Lobbying Act in 1946.

The 1946 Act

A considerable portion of the testimony presented before the Joint Committee on the Organization of Congress during the Seventy-ninth Congress concerned pressure from lobbyists. In its report (S. Report 1011) the Joint Committee stated:

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[1] Congressional Record, LXXX, No. 9 (June 17, 1936), p. 9752.

[2] Milbrath, The Washington Lobbyists, p. 317.

> Your committee heard many complaints during its hearings of the attempts of organized pressure groups to influence the decisions of Congress on legislation pending before the two Houses or their committees.[1]

Recognising fully the lobbyist's right to petition Congress and the right to free expression, the committee nevertheless declared that information concerning lobbying groups could be made available without impairing such rights. It therefore recommended:

> . . . That Congress enact legislation providing for the registration of organized groups and their agents who seek to influence legislation and that such registration include quarterly statements of expenditures made for this purpose.[2]

It continued:

> Groups and employed individuals should be required to register each session with the Clerk of the House of Representatives and the Secretary of the Senate and to submit under oath such pertinent data as will clearly indicate to the Congress the nature and extent of their activities. Registration of individuals should be provided for on uniform blanks in both Houses, stating by whom the agent is employed, the period of such employment, his special subject of legislative interest, and his compensation. Every three months such individuals would be required to report and itemize under oath any expenses incurred by themselves and by the organizations they represent in promoting or opposing legislation, the purpose of the expenditures, and a list of the bills and resolutions promoted or opposed. All information on registration and expenditures for influencing legislation should be compiled by the clerks of the House and Senate and be printed each quarter in the Congressional Record.
>
> Registration of organizations should include a statement of their bona fide total membership and the amounts expended each quarter for the influencing of legislation. Any contributor of money in excess of $500 per year would be required to be listed in the registration.[3]

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[1] U.S., Congress, Joint Committee on the Organization of Congress, S. Rept. 1011, 79th Cong., 2d Sess., 1946, p. 26.

[2] Ibid., p. 27.

[3] Ibid.

The La Follette-Monroney Legislative Reorganization Bill (S. 2177), presented to Congress on May 31, 1946, was accompanied by a carefully worded report (Senate Report 1400) which revealed the committee's sensitivity towards possible criticism of its lobby provisions on constitutional grounds. In an attempt to prevent any misunderstanding of the purposes of Title III, the committee made a statement as to what the title was intended to do and what it was not intended to do:

> It did not apply to the publishers of newspapers, magazines, or other publications, acting in the regular course of business.
>
> It did not apply to persons appearing openly and frankly before the committees of Congress and engaging in no other activities to influence legislation.
>
> It did not require any reports of any persons or organizations required to report under the provisions of the Corrupt Practices Act.
>
> It did not apply to persons appearing voluntarily without compensation.
>
> It did not apply to organizations formed for other purposes whose efforts to influence legislation were merely incidental to the purposes for which formed.[1]

Title III applied chiefly, the report declared, to three distinct classes of so-called lobbyists:

> First. Those who do not visit the Capitol but initiate propaganda from all over the country in the form of letters and telegrams, many of which have been based entirely on misinformation as to facts. This class of persons and organizations will be required under the title, not to cease or curtail their activities in any respect, but to disclose the sources of their collections and the methods in which they are disbursed.
>
> Second. The second class of lobbyists are those who are employed to come to the Capitol under the false impression that they exert some powerful influence over members of Congress. These individuals spend their time in Washington presumably exerting

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[1] U.S., Congress, Senate, Special Committee on the Organization of Congress, S. Rept. 1400, to accompany S. 2177, 79th Cong., 2d Sess., 1946, pp. 26-27.

some mysterious influence with respect to the legislation in which their employers are interested, but carefully conceal from members of Congress whom they happen to contact the purpose of their presence. The title in no wise prohibits or curtails their activities. It merely requires that they shall register and disclose the sources and purposes of their employment and the amount of their compensation.

Third. There is a third class of entirely honest and respectable representatives of business, professional, and philanthropic organizations who come to Washington openly and frankly to express their views for or against legislation, many of whom serve a useful and perfectly legitimate purpose in expressing the views and interpretations of their employers with respect to legislation which concerns them. They will likewise be required to register and state their compensation and sources of their employment.[1]

It seems significant that the legislative history of the La Follette Committee hearings does not indicate that the investigations singled out lobbying for particular study. The committee seemed content to accept testimony concerning lobbying in the course of general discussion of other elements of the Legislative Reorganization Act of 1946.[2]

The Constitutional provision that Congress cannot abridge the right of the people to petition the Government has limited the legislature in passing laws regulating or controlling lobbies and lobbyists. This right to petition means that no citizen can be restrained from belaboring Congress with demands for the passage or defeat of legislation, whether the demands are reasonable or unreasonable and whether they are in the interest of the public welfare or for the betterment of private and selfish ends. The difficult and delicate task is to reach the real evils of lobbying without cutting into real and substantial constitutional rights and without putting an

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[1] Ibid., p. 27.

[2] Schriftgiesser, The Lobbyists, p. 80.

end to all the beneficial contributions made by lobbyists to the national legislative process.

Congress attempted to regulate the lobbying activity by passing the Federal Regulation of Lobbying Act as Title III of the Legislative Reorganization Act of 1946 (60 Stat. 839), which became the law of the land on August 2, 1946. Key wrote:

> An old maxim of American political reform is that publicity is a powerful corrective of wrong-doing. If lobbyists work openly, the reasoning goes, their animus will be known to all and both legislator and public will be protected.[1]

The 1946 law undoubtedly has forced many behind-the-scene legislative lobbyists into public view. The goal of this (or any) lobbying law is not to prohibit or control the activities of lobbyists but to educate--to publicize what interests are at work. Some enterprising lobbyists are even known to use registration to become known and to attract clients!

A quarterly public listing of registered lobbyists in the Congressional Record is perhaps the most reasonable means of identifying lobbyists, without resorting to the powers of an agency such as the Federal Bureau of Investigation. Intended as a disclosure measure, it was patterned after bills considered by both Houses in the Seventy-fourth Congress (S. 2512; H.R. 11663).

> The theory behind such [disclosure] regulation is that if vital information concerning lobbies is made a matter of public knowledge, the people will be able to evaluate the propriety of the pressures which are brought to bear upon government officers. In particular,

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[1]Key, Politics, Parties, and Pressure Groups, p. 151.

> it is hoped that legislators will thereby be able to resist pressures which in the past they have submitted to because of fear that public opinion would not support them if they stood their ground.[1]

Although Dr. Belle Zeller's comments on the "imperfect birth" of the 1946 Act hold true today, it did afford for the first time in the history of Congress a documented partial picture of the Washington lobby scene. Dr. Zeller wrote:

> The lobbying provisions /of the 1946 Act/ gave clear evidence of heavy dependence upon several bills of earlier Congresses which failed to be passed and were of hasty and careless draftsmanship. Small wonder that compliance was faulty.[2]

The "hasty and careless draftsmanship" of the 1946 Act has been the subject of numerous judicial interpretations and congressional queries during its brief 21-year history. Rather than listing the many loopholes that presently exist in the Act, the writer has chosen to present the pertinent events that unveiled these loopholes.

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[1] Edgar Lane, Lobbying and the Law (Los Angeles: University of California Press, 1964), p. 184.

[2] Belle Zeller, The Regulation of Pressure Groups and Lobbyists, Vol. 319 of Unofficial Government: Pressure Groups and Lobbies, p. 98.

CHAPTER IV

THE POST-1946 LOBBYING ACT ERA

> As we no longer define an airplane as what the Wright brothers flew at Kitty Hawk, we can no longer define lobbying as what Sam Ward did during the Grant administration.[1]
>
> -- Edgar Lane

Judicial Interpretations

Although the 1946 Act does not provide for an enforcement agency, the Department of Justice made its first and only attempt at administering and policing the Act in late 1947. Tom C. Clark, the Attorney General at that time, who was later to become an Associate Justice of the Supreme Court, set up a special lobbying unit headed by Special Assistant Attorney General Irving R. Kaufman. This unit reviewed copies of all lobbying registrations and reports, investigated alleged violations of the lobbying law, and saw to it that those who were required to register did so. Only 898 lobbyists of the thousands known to be active had made the required registrations at the time.

During the five-year life of Kaufman's lobbying unit, three court decisions were rendered. The major case involved singling out NAM as not complying fully with the lobbying law and requesting it to submit a

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[1] Lane, Lobbying and the Law, p. 11.

more complete account of its receipts and expenditures. NAM, an opponent of the lobbying law from its enactment, complied with Kaufman's request and then filed a test suit for a declaratory judgment in the U.S. District Court for the District of Columbia (NAM v. McGrath).

NAM v. McGrath (1952)[1]

The court ruled that the financial disclosure requirements of the Lobbying Act, including Section 307, were unconstitutional. Sections 303 and 307 were held invalid as contravening the due-process clause of the Fifth Amendment in failing to define the offense with sufficient precision and to set forth an ascertainable standard of guilt. The wording "to influence, directly or indirectly, the passage or defeat of any legislation by the Congress" was deemed to cover too many undefined yet possible activities, thus denying in advance a determination of what activities could be comprehended within its scope. The same reasoning was applied to the term "principal purpose" in the Act.

The court also noted that the penalty prohibiting any lobbying activities for a period of three years after a conviction for violation of Section 310 was unconstitutional as a deprivation of the right of free speech and to petition the Congress.

But when the ruling reached the Supreme Court, on an appeal by the Department of Justice, the high court overruled the district court on

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[1]National Association of Manufacturers v. McGrath (D.C.D.C.), 103 F. Supp. 510 (1952).

the technical point that Clark, the defendant, had resigned his office and had been replaced by J. Howard McGrath. The Lobbying Act remained in effect, but open to further challenge.

The other two cases involving the 1946 Lobbying Act had been decided prior to the NAM v. McGrath case and are discussed below.

U.S. v. U.S. Savings and Loan League (1949)[1]

A motion to dismiss an indictment under the Lobbying Act on the ground that the three counts thereof were not sufficiently detailed to constitute a valid charge against the defendant was sustained. An information was substituted thereafter, and it too was later dismissed at the request of the Government since the defendant had, subsequent to the date of the indictment, complied with the Lobbying Act.

U.S. v. Slaughter (1950)[2]

A motion to dismiss another indictment was denied on the grounds that the government's bill of particulars stated that it intended to prove that, in order to influence, the defendant[3] had contacted congressmen and was present at certain sessions of Congress. The court could not decide without additional evidence whether the activity of the defendant fell within the purview of the statute.

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[1]U.S. v. U.S. Savings and Loan League (D.C.D.C.), 9 F.R.D. 450 (1949).

[2]U.S. v. Slaughter (D.C.D.C.), 89 F. Supp. 205, 89 F. Supp. 876 (1950).

[3]Roger C. Slaughter was a Democratic congressman from Missouri from 1943-1947 and a bitter political foe of then-President Truman.

The defendant argued that the Lobbying Act was unconstitutional because it was so vague and uncertain as to fail to meet due-process requirements and because it offended the First Amendment. He also contended that he merely (1) aided witnesses who testified before committee and (2) testified himself, both of which activities were exempted from the Act.

The court's ruling declared that the requirements of the Act were a reasonable exercise of the powers of Congress and did not violate the First Amendment. However, the defendant was found not guilty of violating the Act for failing to register, since the evidence showed only that Slaughter's activities consisted largely of preparing statements for witnesses to be given by them before congressional committees. The government's accusations that the defendant had personally contacted members in connection with legislation were not proven.

In 1953, another case (U.S. v. Rumely)[1] defined the term "lobbying activities" in a narrow sense and laid the groundwork for a similarly narrow construction in the later case of U.S. v. Harriss, considered a landmark judicial interpretation of the 1946 Lobbying Act.

U.S. v. Rumely (1953)

Rumely was charged with contempt of Congress for refusing to disclose certain information to the House Select Committee on Lobbying

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[1] U.S. v. Rumely, 345 U.S. 41 (1953).

(the Buchanan committee). Specifically, the committee had asked the names of those who made bulk purchases of books by the Committee for Constitutional Government, of which the defendant was secretary, for further distribution. A decision by the court of appeals reversing a conviction of the defendant was affirmed.

The court held that the House Resolution (H. R. 293, 81st Congress), creating the Select Committee, could not be construed as authorizing it to inquire into all efforts of private individuals to influence public opinion through books and periodicals, however remote the radiations of influence that they may exert upon the legislative process. The court reasoned that doubts of the constitutionality of such authorization would be raised in view of the guarantees of the First Amendment.

The court held that the phrase "lobbying activities" used in the authorizing resolution related to "lobbying in its commonly accepted sense"--that is, "representation made directly to the Congress, its members, or its committees"--and it could not be construed to reach attempts "to saturate the thinking of the community."

U.S. v. Harriss (1954)[1]

The Lobbying Act finally reached the Supreme Court in 1954 in the test case of U.S. v. Harriss. Deakin provides the case background:

> The defendants in the case were Robert M. Harriss, a New York cotton broker; Ralph W. Moore, a Washington commodity trader; James E. McDonald, agriculture commissioner of Texas;

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[1] U.S. v. Harriss, 347 U.S. 612 (1954).

Tom Linder, agriculture commissioner of Georgia; and the National Farm Committee, a Texas corporation. They were charged with attempting to influence the passage of agriculture legislation without registering or reporting under the Lobbying Act. In order to test the lobbying law, Harriss had refused to register when he raised money to lobby for farm price supports. The Justice Department indictments charged that Harriss made payments to Moore, who was secretary of the National Farm Committee, for the purpose of pressuring Congress on legislation, and that Moore made similar payments to McDonald and Linder, all without registering as lobbyists.[1]

This case involved an appeal by the government of a dismissal by the District Court of the United States for the District of Columbia of a criminal prosecution alleging violation by the defendants of the Lobbying Act. The lower court's action had been based on a holding that several sections of the Act were unconstitutional as a criminal statute.

By a 5 to 3 decision (one justice not participating), the Supreme Court agreed that the Act as written sought to bring within its scope activities which, under the First Amendment to the Constitution, are beyond the reach of congressional control or inquiry. Instead of holding the entire Act to be invalid, however, the majority of the Court undertook to define, interpret, and delimit it. In effect, the Court revised the Act's language and, as so interpreted, declared its requirements constitutional.

This approach led to vigorous criticisms by the dissenting justices. Justice Robert H. Jackson, in his dissenting opinion, wrote:

> The clearest feature of this case is that it begins with an Act so mischievously vague that the Government charged with its enforcement does not understand it, for some of its important

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[1] Deakin, The Lobbyists, p. 229.

assumptions are rejected by the Court's interpretation. The clearest feature of the Court's decision is that it leaves the country under an Act which is not much like any Act passed by Congress. Of course, when such a question is before us, it is easy to differ as to whether it is more appropriate to strike out or to strike down. But I recall few cases in which the Court has gone so far in rewriting an Act.

. . . . . .

I think we should point out the defects and limitations which condemn this Act so clearly that the Court cannot sustain it as written, and leave its rewriting to Congress.

In a dissent concurred in by Justice Hugo L. Black, Justice William O. Douglas expressed the conviction that:

The formula adopted to save this Act is too dangerous to use. It can easily ensnare people who have done no more than exercise their constitutional rights of speech, assembly, and press.

The "dangerous" formula included two important points. The Court decided (1) that lobbying subject to the Act includes only direct communication with Congress and (2) that a person (which includes an association or other form of organization) must be covered by the requirements of Section 307 before he incurs any registration or reporting responsibility under other sections of the Act.

Since the Supreme Court's interpretation in effect rewrote Section 307, a determination as to whether a person is covered by the Act cannot be made by reference solely to the language of that Section as originally enacted by Congress. The Court summarized the prerequisites to coverage as follows:

1. The "person" must have solicited, collected, or received contributions.
2. One of the main purposes of such "person," or one of the main purposes of such contributions, must have been to influence the passage or defeat of legislation by Congress.

3. The intended method of accomplishing this purpose must have been through direct communication with members of Congress.

All of the above conditions must exist before a person falls within the scope of Section 307. If any one of the conditions is missing, a person is not covered.

Analysis of Harriss Case

No problem of further interpretation is presented by the first point--by definition of the Act, the term "contributions" is so broad as to include all forms of payment of money or anything of value, including agreements to make a contribution, even if not legally enforceable.

In determining whether a person is covered by the Act, it is necessary, however, to ascertain what activities are covered by the phrase "direct communication with members of Congress" and what is meant by "a main purpose."

"Direct communication with members of Congress" is construed narrowly. In the opinion of U.S. v. Rumely, language similar to that of Section 307 was held to encompass "representations made directly to the Congress, its members, or its committees." That opinion emphasized that such language does not reach attempts "to saturate the thinking of the community." Had the Court stopped with the reference to the Rumely case, it might have averted some confusion. It went on, however, to indicate that "direct communication with members of Congress" includes "direct pressures, exerted by the lobbyists themselves or through their hirelings or through an artificially stimulated letter campaign."

The net effect is to make it clear that the scope of this Act does not include forms of general publicity, such as dissemination of information relating to legislation through publications, press releases, broadcasts, and similar media. The fact that viewpoints are expressed, or that the publicity is designed to influence opinion, is not sufficient to bring such materials within the scope of the Act where there is no direct request that communications be sent to Congress supporting views expressed.

Likewise, a letter or statement to Congress or a committee of Congress expressing the viewpoint of an organization on legislation is considered "direct lobbying." Between these two categories of communications, however, a "twilight zone" is created. Obviously, many communications or publications relating to national issues fall into this uncertain area.

The concept of direct lobbying appears to cover testimony and other statements presented or sent to congressional committees. Senate Reports 1011 and 1400, and the fact that Section 308 (relating to registration and reporting) is specifically inapplicable "to any person who merely appears before a committee . . . in support of or opposition to legislation," have led to a general belief that testimony is not covered by the Act. Section 307, in designating persons to whom the Act applies, does not contain any exemption such as that of Section 308. Further, Section 305 (which specifies certain reports to be made of contributions and expenditures) contains no such exemption.

The questions of applicability, then, follow: Has the person solicited or received contributions? Has he engaged in some direct

lobbying activity? Is the activity of sufficient significance to bring the person under the Act? Here again, the Court's opinion in the Harriss case leaves multipurpose organizations (i.e., Chamber of Commerce) in a state of uncertainty.

The summary of prerequisites to coverage under Section 307 refers to "one of the main purposes." Since this is a summarization, reference must be made to the discussion in the opinion of the meaning of the language "the principal purpose" and "to be used principally to aid" as contained in Section 307. Thus, the term "principal" excludes from the scope of Section 307 those contributions and persons having only an incidental purpose of influencing legislation. The term is construed to refer to a contribution which in substantial part is to be used to influence legislation through direct communication with Congress, or with a person whose activities in substantial part are directed toward influencing legislation through direct communication with Congress.

It should be kept in mind during further discussions of the Act that contributions or expenditures required to be reported are restricted to those items falling within the scope of "direct lobbying," and exempt those persons conducting indirect or grassroots campaigns. "The majority opinion said that members of Congress must be able to evaluate such /grassroots/ pressures, to put them in perspective, and then took away the chief means of doing so."[1]

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[1]Deakin, The Lobbyists, p. 232.

U.S. v. Neff (1956)[1]

This case is the only successful prosecution under the Lobbying Act during its 21-year life. It involved two attorneys, John Neff and Elmer Patman, employed to influence the passage of the Natural Gas Act. The charge against Neff and Patman was that they had failed to register as lobbyists. Their employer, Superior Oil Company of California, was accused of aiding and abetting their failure to register. The case concerned a campaign contribution of $2,500 which Neff tried to give to the late Senator Francis H. Case (R-S.D.) while the Senate was considering the Harris-Fulbright Natural Gas Bill. In 1956, Superior Oil was fined $10,000 and Neff and Patman were fined $2,500 each and given suspended one-year jail sentences after the oil company and the two lawyers pleaded guilty of violating the Lobbying Act. The great furor over the Case episode and the Senate investigation that followed,[2] motivated President Eisenhower to veto the Harris-Fulbright Bill, even though he favored it.

Congressional Investigations

In February, 1948, the Senate Committee on Expenditures in the Executive Departments held a five-day public hearing for the purpose of evaluating the Legislative Reorganization Act of 1946. The Committee

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[1] U.S. v. Neff (D.C.D.C.), Criminal No. 768-56 (1956) (unreported).

[2] Senator Walter F. George's (D-Ga.) Select Committee for Contribution Investigation conducted hearings relative to S. R. 205.

chairman, Senator George D. Aiken (R-Vt.), invited Dr. Belle Zeller to testify as to the workability of Title III. Dr. Zeller presented eight recommendations for the committee's consideration,[1] but the committee chose to make no move toward strengthening Title III.

This lack of action by the Aiken committee provided President Truman with some powerful ammunition for the Presidential campaign of 1948. While lobbying activities were continuing unabated, President Truman declared that the Eightieth Congress:

> . . . was the most thoroughly surrounded . . . with lobbies in the whole history of this great country of ours. There are more lobbyists in Washington, there was more money spent by lobbyists in Washington, than ever before in the history of the Congress of the United States. It's disgraceful . . .[2]

When the Democratic-controlled Eighty-first Congress met in January, 1949, Senator Harley M. Kilgore (D-W. Va.) introduced a resolution calling for a comprehensive investigation of lobbying. However, the Senate was in no hurry to investigate lobbying, so it was up to Congressman Frank Buchanan (D-Pa.) to introduce a similar resolution, which was subsequently passed by the House on May 18, 1949.

The Buchanan Committee

The House Select Committee on Lobbying Activities, commonly referred to as the Buchanan committee, was created pursuant to House

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[1]Schriftgiesser, The Lobbyists, p. 110.

[2]M. B. Schnapper, ed., The Truman Program: Addresses and Messages by President Harry S. Truman (Washington: Public Affairs Press, 1949), p. 196.

Resolution 298 of the Eighty-first Congress, first session. This committee conducted the most comprehensive investigation of lobbying in the history of Congress. Its membership consisted of four Democrats and three Republicans. They included Chairman Frank Buchanan, Henderson Lanham (D-Ga.), Carl Albert (D-Okla.), and Clyde Doyle (D-Calif.); Charles A. Halleck (R-Ind.), Clarence J. Brown (R-Ohio), and Joseph P. O'Hara (R-Minn.). Incidentally, the Committee's General Interim Report and its Report and Recommendations on the Federal Lobbying Act were approved by a 4 to 3 vote, with all members voting straight party lines.

The majority of the committee viewed the 1946 Lobbying Act as a well-intentioned first step which should be strengthened and made more effective. It also noted that this was the first time a congressional investigation of lobbying activities had been conducted within the context of a going system of registration.

The Report and Recommendations on the Federal Lobbying Act (Report 3239) emphasized:

> The Lobbying Act does not regulate lobbying in any way, but merely requires public disclosure of lobbying activities and the identity of those who finance efforts to influence legislation.[1]

Committee members considered the right of petition to be an essential guarantee under our constitutional system of representative government.

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[1] U.S., Congress, House, Select Committee on Lobbying Activities, Report and Recommendations on Federal Lobbying Act, Report 3239, Part 1, 81st Cong., 2d Sess., 1950, p. 16.

At the conclusion of its two-year investigation of lobbying, the committee proposed a series of amendments to the Lobbying Act. It recommended changing the name of Title III to the Legislative Interests Reports Act; exempting radio and television broadcasting from coverage; eliminating the fine or imprisonment provisions; and requiring less detail in the required reports.[1] These recommendations were submitted to the House in the form of a Report on January 1, 1951, and since the NAM v. McGrath case was still pending at the time, the report recommended that no bills incorporating these amendments be introduced until after the determination of that case.

Although the committee noted a rapid increase in the use of grassroots techniques, they made no recommendations in this regard, as the Lobbying Act would still cover grassroots pressure until the U.S. v. Harriss decision three years later.

In their Minority Report, submitted as Part 2 of Report 3239, Congressmen Halleck, Brown, and O'Hara decried the fact that the accomplishments of the committee had fallen far short of the important and desirable purposes underlying the creation of the committee. They sharply criticized the Democratic members and pointed out several factors that had definite political overtones. First, of the 173 organizations bombarded with the committee's detailed questionnaire, only five labor organizations were queried. Secondly, the critics contended that Roger W. Jones

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[1] Ibid., pp. 29-30.

(then Assistant Director, Bureau of the Budget) was called as a witness to set the stage for a complete whitewash of lobbying by government agencies. Lastly, the timing of the release of the various committee reports came under attack from the minority members. The committee document "Expenditures by Corporations To Influence Legislation" and Report 3239 were released to the public in late October, 1950, about two weeks prior to the November elections. The document "Expenditures by Labor and Farm Groups To Influence Legislation" was not released until after the November elections. The Minority Report also contained copies of the bitter correspondence that was exchanged between the Minority members and Chairman Buchanan, leading up to the rather "unusual" manner of releasing the committee's findings and recommendations.

Although the Buchanan committee's recommendations did not result in a modification of the 1946 Lobbying Act, the conduct of the committee's activities clearly illustrates that "any investigation of lobbying is, in many respects, an investigation of Congress itself. Lobbying is a practice too close to the legislative function for Congress to be able to examine it with the proper perspective."[1]

McClellan Committee

As a result of the 1956 natural gas scandal, Senator Walter F. George (D-Ga.) conducted an investigation of the $2,500 campaign offer to

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[1]Schriftgiesser, The Lobbyists, p. 129.

Senator Case. Senator John L. McClellan (D-Ark.) was assigned the chairmanship of a Senate committee to study political activities and campaign contributions in conjunction with lobbying.

The Senate Special Committee was appointed on February 23, 1956, by the then Vice President, Richard M. Nixon, and Senator McClellan issued the following challenge to the committee's membership:

> . . . We have a job here as a committee, as I see it, to try to bring completely to light the nature and character of activities which generally prevail today with respect to what some term "lobbying."
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> The right to petition includes the right to lobby. The only concern I have is that I want lobbying open and above board so everybody will know it for what it is. In other words, we don't want other pressures in connection with the legitimate right to petition. We don't want those applied, those that might be regarded as corrupt, such as may have precipitated this whole inquiry at this time, and any other practices that would not be proper or fair or just in undertaking to persuade or influence legislators.
>
> If we find any, we want to expose them and determine how to deal with them. The right to petition, the right of constituents, the right of any American to contact a Member of the Congress of the United States, and express his views on legislation or issues that are pending before the country, I think, is one which must be preserved.[1]

The McClellan Committee recommended adoption of a "Legislative Activities Disclosure Act" (S. 2191) in its final report (No. 395) of May 31, 1957. The McClellan bill would have tightened several loopholes in the 1946 Lobbying Law by eliminating the "principal purpose" criterion and designating the Comptroller General to administer the Act. But perhaps even more importantly, Senator McClellan's bill provided for

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[1] To Investigate Political Activities, Lobbying, and Campaign Contributions, Hearings, p. 428.

disclosure of grassroots lobbying costs under certain circumstances. Senator McClellan had indicated a concern for the disclosure of grassroots costs during the committee hearings:

> I can appreciate, and I think we all agree, that there has been a measure of confusion as to what the present /1946/ act really covers, what activities it covers, and what it does not cover. But if there is any such thing as lobbying, in other words, unless that is a useless word with no meaning at all in practical application, these /grassroots/ activities, in my judgment, would be at least a form of lobbying. I am not saying it is something that should be made illegal. I am not passing judgment on that at this time. I am not saying that it is an activity that should be further regulated. But if the term "lobbying" does not include these /grassroots/ campaigns, to influence the vote of Members of Congress, then I don't know what practical interpretation you could place on the term "lobbying."[1]

Senator McClellan's bill was never afforded a hearing on the Senate floor and consequently not in the courts. It met strong resistance from the Chamber of Commerce, NAM, and others, and died with the end of the Eighty-fifth Congress.

Joint Committee on the Organization of the Congress

This Joint Committee was established by a concurrent resolution (S. Con. Res. 2) during the first session of the Eighty-ninth Congress, and was co-chaired by Senator A.S. Mike Monroney (D-Okla.) and Congressman Ray Madden (D-Ind.). Although the committee conducted four sessions of hearings in June, 1965, only one witness (Neil Pierce of Congressional Quarterly Service)was invited to testify on lobbying laws.

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[1] Ibid., pp. 546-547.

The committee was not authorized to report out a legislative bill and expired as a body on December 31, 1967. Its final report (Senate Report 1414), issued July 28, 1966, contained several recommendations concerning the regulation of lobbying that were to be incorporated at a later date by a special committee of the Senate.

Senate Special Committee on
the Organization of the Congress

This committee was formed pursuant to the provisions of Senate Resolution 293, Eighty-ninth Congress, second session, and was chaired by Senator Monroney. It incorporated the recommendations of Senate Report 1414 and held public hearings over a five-month period to obtain the views of 199 witnesses, including 106 members of Congress. However, the committee indicated little interest in receiving testimony on the regulation of lobbying and Title V of the bill (S. 355) was not attached until the last week of the Hearings, perhaps as an afterthought. The committee reported out Senate Report 1, to accompany the Legislative Reorganization Act of 1967 (S. 355) during the first session, Ninetieth Congress. S. 355, discussed in more detail in the following chapter, proposed the establishment of a Joint Committee on Congressional Operations. In addition, it designated the Comptroller General as the enforcement agent of the lobbying regulation provisions of Title V of the bill.

CHAPTER V

REFORMS AND REMEDIES

> We should improve the process of democracy . . . by tightening our laws regulating lobbying.
>
> -- President Lyndon B. Johnson
> State of the Union Message
> January 10, 1967

Although the U.S. Supreme Court found the 1946 Lobbying Act constitutional, several loopholes in the provisions of the Act have become apparent during its 21-year history. The Act has been interpreted to exempt many organizations having obvious legislative interests. Every person engaged in legislative activity is free to decide whether to register under the Lobbying Act, and, if registered, how much money to report as having been spent on lobbying.

There has been a general downward trend in the amount of lobby spending reported to Congress since 1950. This trend is normally attributed to the Slaughter and Harriss court cases in 1950 and 1954, respectively. NAM stopped registering as an organization in 1950, and the Chamber of Commerce followed suit in 1954.[1] The following table lists the Congressional Quarterly Service's computation of lobby spending

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[1] NAM and the Chamber of Commerce have continued to report a portion of their spending by individuals in their organizations registered as lobbyists.

figures for selected years reported to the Clerk of the House under the 1946 Lobbying Act.

TABLE

LOBBY SPENDING FOR SELECTED YEARS

Year	Groups Reporting	Total Amount Spent
1949	256	$ 7,969,710
1950	312	10,303,204
1951	269	8,771,097
1952	216	4,823,981
1953	197	4,445,841
1954	225	4,286,158
1956	264	3,957,120
1959	280	4,281,468
1960	289	3,854,375
1961	312	3,986,096
1962	304	4,211,304
1963	286	4,223,605[a]
1965	304	5,484,413[b]
1966	296	4,656,872[c]

[a]Congress and the Nation, 1945-1964, p. 1593.

[b]Congressional Quarterly Almanac, XXII (Washington: Congressional Quarterly Service, 1967), p. 1346.

[c]CQ Guide to Current American Government (Washington: Congressional Quarterly Service, 1967), p. 102.

The 1965 spending figure was the highest for any year since 1951, primarily because of the unusually large expenditure--$1,155,935--by the American Medical Association in its unsuccessful fight against passage of "Medicare."

Lobbying has often been characterized as an iceberg with only the tip showing. Actually, this characterization is inadequate because, of the vast amount of money spent each year in the United States to influence legislation, only a relatively small amount is disclosed to the public and the Congress. Thus, not much of even the tip is visible. "The Washington telephone directory lists some 1,200 trade, business, and professional associations and more than 100 national labor organizations with offices in the Nation's capital."[1] Only 296 of these organizations filed lobbying reports in 1966.

Of the many men and organizations whose work brings them into the legislative arena in one way or another, only a few register under the 1946 Act. Two prominent Washington organizations that do not register are Hill and Knowlton, a public relations firm that conducts large-scale grassroots campaigns, and the law firm of Clifford[2] and Miller. Deakin quotes a Clifford and Miller associate as explaining that the law firm does not register because it does not "communicate with Congress in any way."[3]

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[1]Deakin, The Lobbyists, p. 34.

[2]Clark McAdams Clifford was sworn in as the Secretary of Defense on March 1, 1968.

[3]Deakin, The Lobbyists, p. 173.

Hill and Knowlton, Clifford and Miller, and many other organizations use the absence of the communicative function as an excuse for not registering under the 1946 Act. Most of these organizations insist that their only function is to inform their home offices or clients on the status of legislation, and that they do not attempt to influence the passage or defeat of specific bills.

The vague definitions in the 1946 Lobbying Act, to be discussed next, permit the lobbyist a great deal of discretion in deciding whether to list his activities and expenditures.

Loopholes in the Act

The three major loopholes in the 1946 Lobbying Act concern the varied interpretations of "direct communications" and "principal purpose" and the Act's failure to designate an agency or official to administer and enforce the law.

Direct Communication

The Supreme Court made it clear in the Harriss case that general information about legislation, such as that contained in publications, press releases, and other grassroots devices, is not covered by the Act. On the other hand, the Court's rulings covered communications in which "representations are made directly to the Congress, its members, or its committees."

After making this clear distinction, the Court went on to muddy the waters somewhat by including in direct communications "direct

pressures, exerted by the lobbyists themselves or through their hirelings, or through an artificially stimulated letter campaign."

Between the two basic categories of communications, a twilight zone has been created. Many grassroots communications and publications fall into this uncertain area. This situation has worsened in recent years as the utilization of grassroots tactics has greatly increased.

Principal Purpose

In the Harriss case, the Court made it clear that the phrase "principal purpose" excludes from coverage those contributions and persons having only an incidental purpose of influencing legislation. Many large organizations, such as NAM, seize upon the "principal purpose" phrase as exempting them from registering and reporting under the 1946 Act. NAM contends that it is a multipurpose organization and that influencing legislation is not its principal purpose. The general counsels of the NAM and the Chamber of Commerce agree that any workable lobbying regulation must define the legal meaning of "seeking to influence legislation."[1] One of many examples of the abuse of the "principal purpose" interpretation was cited by Deakin:

> For three months, Crawford H. Greenewalt, president of the mammoth E. I. du Pont de Nemours, lobbied intensively up and down the halls of Congress to put through the du Pont stockholders tax relief bill. The bill, which was passed and signed by President

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[1]Milton A. Smith, General Counsel, Chamber of Commerce of the United States, and Lester H. Miller, General Counsel, National Association of Manufacturers, in a private interview on March 6 and March 8, 1968, respectively.

Kennedy, permitted du Pont stockholders to pay a lower capital gains tax rather than straight income tax on General Motors stock they received under a court divestiture order.

Greenewalt visited more than 50 Congressmen and top government officials to plug for the bill. He talked with the late Speaker Sam Rayburn, Senate Majority Leader Mike Mansfield, and most of the other Democratic and Republican leaders of the House and Senate. He conferred several times with Chairman Wilbur D. Mills of the tax-writing House Ways and Means Committee, and he saw almost all of the 15 Democratic members of Ways and Means.

. . . . . .

This was lobbying activity of a sustained sort but Greenewalt did not register under the Lobbying Act. One of his associates explained that the du Pont president is not paid his salary for the principal purpose of lobbying. This is obviously true, so, in the Alice-in-Wonderland world of lobbying, he was lobbying but was not a lobbyist.[1]

An organization which works only occasionally to influence legislation may, at a particular time and for a limited period, exert much influence in connection with a specific piece of legislation. Most organizations interpret "principal purpose" as permitting them to operate without registration unless it can be proven that more than 50 per cent of their total activities constitute lobbying.

No Enforcement Agency

As a U.S. Senator in 1956, the late President John F. Kennedy declared that the chief defect of the lobbying law was its failure to designate an agency or official to administer and enforce it.[2] There is neither a body nor authority to administer it, to examine the statements to determine if the terms of the statute have been complied with, and to investigate

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[1] Deakin, The Lobbyists, pp. 20-21.

[2] Ibid., p. 255.

individuals or organizations that have not filed. The reader will recall from Chapter III the account of Attorney General Tom Clark's action in 1947 to set up a lobbying enforcement agency even though the 1946 Act contains no authority for such action.

Lobbying authorities and laymen alike disagree on what agency should enforce lobbying activities. President Kennedy and David B. Truman were among those recommending the Department of Justice for this function. Dr. Belle Zeller recommended an administrative agency with powers similar to those now enjoyed by the Securities and Exchange Commission. The McClellan committee in 1956, the Senate Rules Committee investigating the Bobby Baker scandal in 1964, and S. 355[1] all recommended the Comptroller General. Others have recommended a Joint Committee on Congressional Operations, as recently as Congressman H. A. Smith's (R-Calif.) bill (H. R. 15687) introduced February 29, 1968.[2]

Neither the Clerk of the House nor the Secretary of the Senate has the administrative facilities to analyze relevant information submitted under the 1946 Act, make pertinent abstracts from it, adopt an efficient classification and indexing system, or tabulate and summarize the information filed by registrants. As to enforcement, the Department of Justice

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[1]S. 355 was passed by the Senate by a 79 to 5 vote on March 6, 1967. It was referred to the House Rules Committee on March 9, 1967, and remained there a year later.

[2]Congressional Record, CXIV, No. 31 (February 29, 1968), H 1541-2.

which enforces the criminal provisions of the Act is hampered by being in a different branch of the government and having facilities for investigation that are already overtaxed.

The Ideal (?) Lobbying Act

Although the writer recognizes that any legislation that covers all lobbying activities would surely run afoul of the First Amendment, the need to design an effective and enforceable lobbying act still exists today. The inadequacies and vagaries of the 1946 Act reduce its effectiveness in presenting to Congress and the Nation a true picture of what lobbyists are doing and how much they are spending in the Nation's capital.

Many different versions of lobbying legislation are introduced during each session of Congress. Two of the lobbying bills introduced during the Ninetieth Congress are discussed below.

Legislative Reorganization Act of 1967

Title V (Regulation of Lobbying) of this Act (S. 355) was proposed by the Special Committee on the Organization of the Congress. It was introduced on the Senate floor by Senator A. S. Mike Monroney (D-Okla.) on January 16, 1967, and was passed by an overwhelming margin in the Senate on March 6, 1967. On March 9, 1967, S. 355 was referred to the House Rules Committee, where it seemingly is dying a slow but certain death at this writing. This delay appears to be due primarily to provisions of other titles of the Act calling for extensive restructuring of the present committee system.

The principal provisions of Title V are:

1. Designation of the Comptroller General of the United States as administrator of the Act.
2. Application to any person who solicits or receives money or other consideration "a substantial purpose of which is to be used to aid, or a substantial purpose of which person is to aid" in lobbying.
3. Requirement for filing of reports to include only the portions which are covered by the Act, where contributions or expenditures are involved which are partly for purposes covered by the Lobby Act and partly for other purposes.

Legislative Reorganization Act of 1968

Concerning regulation of lobbying, Title V of Congressman Smith's H. R. 15687:

1. Vests administration in a Joint Committee on Congressional Operations empowered to conduct hearings on activities which intend to influence legislation. It also empowers this committee to investigate incidents of executive branch lobbying with appropriated moneys.
2. Applies the "substantial purpose" rule in a similar manner of that of S. 355.
3. Applies S. 355's guidelines on reporting contributions and expenditures.

The writer's recommendations for the major provisions of a lobbying act are outlined in the following chapter. Although his proposal may not be considered an ideal lobbying act, if enacted by Congress it would be a step in the right direction toward effective lobbying legislation.

CHAPTER VI

CONCLUSION

> The most effective control of lobbying, and perhaps all that is really needed, is the election of highly qualified responsible persons to public office.[1]
>
> -- James Deakin

The historical development of this Nation indicates that substantial attention has been focused on the activities of lobbyists over a long period of time. It seems clear that the 1946 Act has not produced results adequate to satisfy those most interested in maintaining extensive knowledge of lobbyists' activities and expenditures. The somewhat incidental efforts to introduce change suggest that the urgency of change is felt by only a relatively few legislators. Yet there seems to be enough support to bring about some change in lobbying legislation as an adjunct to other legislative action.

The seriousness of those who are strongly interested, and the progress made to date, suggest that change is feasible. The political expediency described below suggests the imminent probability of some action.

As a first step, Congress must enact an effective lobbying law that covers grassroots and direct contact by lobbyists and provides for rigorous enforcement. The relatively few congressmen who are concerned about the ill effects of lobbying must overcome their preoccupation with treating the effects of lobbying while disregarding the causes of lobbying

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[1] The Lobbyists, p. 326.

abuses. Unfortunately, congressional respondents to Milbrath's study indicated "almost no serious dissatisfaction with lobbying and no disposition to do something further about legal regulation."[1]

George Meader, Chief Counsel of the Senate's Special Committee on the Organization of the Congress, said that "The political atmosphere in this, a Presidential election year, almost guarantees the passage of a congressional reform bill in some form during the second session of the Ninetieth Congress."[2] Meader did not venture a guess as to whether S. 355 or H. R. 15687 would be that reform bill; however, he did assist Congressman Smith in the formulation of H. R. 15687.

Although congressmen have substantially more freedom of action from lobbyists than is commonly understood, Congress could lessen its dependence on the information function of lobbyists by improving its own procedures and by supplying itself with a greater amount of professional assistance for committees and individual members. But dispensing with lobby services without adequate replacement would make Congress even more dependent on the Executive Branch. The Congress is ill equipped to compete with the Executive Branch in hiring staff and conducting research and would be at a serious disadvantage vis-a-vis the Executive Branch if it were not for alternative sources of information--mainly

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[1]Milbrath, The Washington Lobbyists, p. 317.

[2]George Meader, Chief Counsel, Senate Special Committee on the Organization of Congress, in a private interview on March 5, 1968.

lobbyists. However, a balance in dependence upon the alternative sources of information must continue to be sought by the Congress.

"Congress, the 535 men and women elected by the people of the United States to make their laws, remains the chief battleground of the lobbyists."[1] In fact, most lobbyists spend as much time in "liaison" with the Executive Branch as with the Congress. Although this liaison is not within the scope of this thesis, it is significant that this contact with the Executive Branch is not considered lobbying by the general public or by the law. The Chamber of Commerce of the United States has experienced noteworthy success in this field with its "executive conferences," which consist of luncheon discussions with members of the President's Cabinet. These conferences normally reap valuable advance word on the White House's intensions on legislation relating to business affairs. In fact, some of Milbrath's respondents said that they "find it more efficacious to influence the interpretation of a bill /in the Executive Branch/ than to participate in the drafting and passage of it."[2]

Lobbying is an integral part of today's democratic process; the effort to understand it and enforce it within our constitutional framework of government will continue as long as legislation continues to be made by a Congress elected by the people. Lobbying should not be universally condemned because of isolated incidents such as the Natural Gas case in 1956.

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[1]Deakin, The Lobbyists, p. 78.

[2]Milbrath, The Washington Lobbyists, p. 33.

In a complex society such as ours, it is necessary to have responsible lobbying. Not everyone can come to the "town meeting"; hence, people must organize to gain representation in Congress. The lobbyist is their proxy whose efforts contribute to the stability of the system.

Although the writer recognizes the difficulties of drafting regulation-of-lobbying legislation that would accurately reveal the size and scope of the lobbyist's efforts to influence the congressional decision-making process, while respecting the guarantees of the First Amendment, such legislation is needed now. One synthesis drawn from various definitions and enforcement agencies that have been proposed by others, and which the writer advocates, follows.

The Comptroller General, bound by the requirements of the Administrative Procedure Act,[1] would serve as the enforcement agent. Specifically, the General Accounting Office would act as the "lobbying watchdog" for the Legislative Branch just as it serves as the watchdog in behalf of Congress's "power of the purse" today.

The McClellan committee's bill (S. 2191),[2] providing for disclosure of grassroots lobbying costs under certain circumstances, would be adopted. This would require financial reports from persons and organizations who conduct big campaigns to marshal public sentiment for or against a specific legislative issue in Congress.

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[1]This provision was not included in S. 355.

[2]See <u>supra</u>, pp. 67-68.

And finally, confusion regarding "principal purpose" would be greatly reduced by adoption of President Kennedy's measure which proposed replacing the term lobbyist with "legislative agent." A legislative agent was defined as any person who, for pay, "engages himself to influence legislation . . . and who . . . devotes any portion of his time to efforts to influence legislation."[1]

Properly applied, lobbying can assist the legislative process and further the public interest. This will come about when the role of the lobbyist is clearly understood and his actions are subjected to attention sufficient and searching enough that legislators and the public will not tolerate abuses in lobbying.

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[1]S. 2308 would have amended the Legislative Reorganization Act of 1946.

APPENDIX

FEDERAL REGULATION OF LOBBYING ACT

Title III of the Legislative Reorganization Act of 1946

(S. 2177, 79th Cong., 2d sess., Pub. Law 601; 2 U.S.C. 261-270)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled:

* * * * * *

TITLE III--REGULATION OF LOBBYING ACT

Short Title

Sec. 301. This title may be cited as the "Federal Regulation of Lobbying Act."

Definitions

Sec. 302. When used in this title--

(a) The term "contribution" includes a gift, subscription, loan, advance, or deposit of money or anything of value and includes a contract, promise, or agreement, whether ot not legally enforceable, to make a contribution.

(b) The term "expenditure" includes a payment, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure.

(c) The term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons.

(d) The term "Clerk" means the Clerk of the House of Representatives of the United States.

(3) The term "legislation" means bills, resolutions, amendments, nominations, and other matters pending or proposed in either House of Congress, and includes any other matter which may be the subject of action by either House.

Detailed Accounts of Contributions

Sec. 303. (a) It shall be the duty of every person who shall in any manner solicit or receive a contribution to any organization or fund for the purposes hereinafter designated to keep a detailed and exact account of--

(1) all contributions of any amount or of any value whatsoever;

(2) the name and address of every person making any such contribution of $500 or more and the date thereof;

(3) all expenditures made by or on behalf of such organization or fund; and

(4) the name and address of every person to whom any such expenditure is made and the date thereof.

(b) It shall be the duty of such person to obtain and keep a receipted bill, stating the particulars, for every expenditure of such funds exceeding $10 in amount, and to preserve all receipted bills and accounts required to be kept by this section for a period of at least two years from the date of the filing of the statement containing such items.

Receipts for Contributions

Sec. 304. Every individual who receives a contribution of $500 or more for any of the purposes hereinafter designated shall within five days after receipt thereof rendered to the person or organization for which such contribution was received a detailed account thereof, including the name and address of the person making such contribution and the date on which received.

Statements To Be Filed with Clerk of House

Sec. 305. (a) Every person receiving any contributions or expending any money for the purposes designated in subparagraph (a) or (b) of section 307 shall file with the Clerk between the first and tenth day of each calendar quarter, a statement containing complete as of the day next preceding the date of filing--

(1) the name and address of each person who has made a contribution of $500 or more not mentioned in the preceding report; except that the first report filed pursuant to this title shall contain the name and address of each person who has made any contribution of $500 or more to such person since the effective date of this title;

(2) the total sum of the contributions made to or for such person during the calendar year and not stated under paragraph (1);

(3) the total sum of all contributions made to or for such person during the calendar year;

(4) the name and address of each person to whom an expenditure in one or more items of the aggregate amount or value, within the calendar year, of $10 or more has been made by or on behalf of such person, and the amount, date, and purpose of such expenditure;

(5) the total sum of all expenditures made by or on behalf of such person during the calendar year and not stated under paragraph (4);

(6) the total sum of expenditures made by or on behalf of such person during the calendar year.

(b) The statements required to be filed by subsection (a) shall be cumulative during the calendar year to which they relate, but where there has been no change in an item reported in a previous statement only the amount need be carried forward.

Statement Preserved for Two Years

Sec. 306. A statement required by this title to be filed with the Clerk--

(a) shall be deemed properly filed when deposited in an established post office within the prescribed time, duly stamped, registered, and directed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia, but in the event it is not received, a duplicate of such statement shall be promptly filed upon notice by the Clerk of its nonreceipt;

(b) shall be preserved by the Clerk for a period of two years from the date of filing, shall constitute part of the public records of his office, and shall be open to public inspection.

Persons To Whom Applicable

Sec. 307. The provisions of this title shall apply to any person (except a political committee as defined in the Federal Corrupt Practices Act, and duly organized State or local committees of a political party), who by himself, or through any agent or employee or other persons in any manner whatsoever, directly or indirectly, solicits, collects, or receives money or any other thing of value to be used principally to aid, or the principal purpose of which person is to aid, in the accomplishment of any of the following purposes:

(a) The passage or defeat of any legislation by the Congress of the United States.

(b) To influence, directly or indirectly, the passage or defeat of any legislation by the Congress of the United States.

Registration with Secretary of the Senate and Clerk of the House

Sec. 308. (a) Any person who shall engage himself for pay or for any consideration for the purpose of attempting to influence the passage or defeat of any legislation by the Congress of the United States shall, before doing anything in furtherance of such object, register with the Clerk of the House of Representatives and the Secretary of the Senate and shall give to those officers in writing and under oath, his name and business address, the name and address of the person by whom he is employed, and in whose interest he appears or works, the duration of such employment, how much he is paid and is to receive, by whom he is paid or is to be paid, how much he is to be paid for expenses, and what expenses are to be included. Each such person so registering shall, between the first and tenth day of each calendar quarter, so long as his activity continues, file with the Clerk and Secretary a detailed report under oath of all money received and expended by him during the preceding calendar quarter in carrying on his work; to whom paid; for what purposes; and the names of any papers, periodicals, magazines, or other publications in which he has caused to be published any articles or editorials; and the proposed legislation he is employed to support or oppose. The provisions of this section shall not apply to any person who merely appears before a committee of the Congress of the United States in support of or opposition to legislation; nor to any public official acting in his official capacity; nor in the case of any newspaper or other regularly published periodical (including any individual who owns, publishes, or is employed by any such newspaper or periodical) which in the ordinary course of business publishes news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge the passage or defeat of legislation, if such newspaper, periodical, or individual, engages in no further or other activities in connection with the passage or defeat of such legislation, other than to appear before a committee of the Congress of the United States in support of or in opposition to such legislation.

(b) All information required to be filed under the provisions of this section with the Clerk of the House of Representatives and the Secretary of the Senate shall be compiled by said Clerk and Secretary, acting jointly, as soon as practicable after the close of the calendar quarter with respect to which such information is filed and shall be printed in the Congressional Record.

Reports and Statements To Be Made Under Oath

Sec. 309. All reports and statements required under this title shall be made under oath, before an officer authorized by law to administer oaths.

Penalties

Sec. 310. (a) Any person who violates any of the provisions of this title, shall, upon conviction, be guilty of a misdemeanor, and shall be punished by a fine of not more than $5,000 or imprisonment for not more than twelve months, or by both such fine and imprisonment.

(b) In addition to the penalties provided for in subsection (a), any person convicted of the misdemeanor specified therein is prohibited, for a period of three years from the date of such conviction, from attempting to influence, directly or indirectly, the passage or defeat of any proposed legislation or from appearing before a committee of the Congress in support of or opposition to proposed legislation; and any person who violates any provision of this subsection shall, upon conviction thereof, be guilty of a felony, and shall be punished by a fine of not more than $10,000, or imprisonment for not more than five years, or by both such fine and imprisonment.

Exemption

Sec. 311. The provisions of this title shall not apply to practices or activities regulated by the Federal Corrupt Practices Act nor be construed as repealing any portion of said Federal Corrupt Practices Act.

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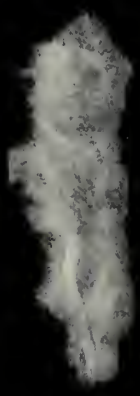

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